

No. 15727

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CALIFORNIA DATE GROWERS ASSOCIA-  
TION,

Respondent.

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Transcript of Record

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Petition for Enforcement of an Order of the  
National Labor Relations Board

FILED  
FEB 18 1958

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1-E

United States of America Before the National Labor  
Board, Twenty-First Region

Case No. 21-CA-2130

CALIFORNIA DATE GROWERS ASSOCIA-  
TION

and

UNITED PACKINGHOUSE WORKERS OF  
AMERICA, CIO, LOCAL UNION #78

COMPLAINT

It having been charged by United Packinghouse Workers of America Local #78, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the Union, that California Date Growers Association, hereinafter referred to as the Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, Public Law 101, 80th Congress, First Session, hereinafter called the Act; the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

1. Respondent, California Date Growers Association, is a California corporation with a packing house in Indio, Riverside County, California, where

General Counsel's Exhibit No. 1-E—(Continued)  
it is engaged in the business of processing and packaging dates and date products.

2. Respondent annually ships from its Indio, California, plant directly to points located outside the State of California dates and date products valued at in excess of \$50,000.

3. Respondent is and at all times material herein has been engaged in commerce within the meaning of the Act.

4. United Packinghouse Workers of America, Local #78, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

5. A unit for the purposes of collective bargaining composed of all packing shed employees employed by the Respondent at its Indio, California, packing shed, excluding all office and clerical employees, and also excluding watchmen, guards, supervisors and professional employees as defined in the National Labor Relations Act, as amended, would insure the Respondent's employees the full benefit of the right to self-organization and otherwise effectuate the policies of the Act, and is, therefore, a unit appropriate for the purposes of collective bargaining.

6. On October 21, 1954, the Acting Regional Director certified that pursuant to the terms and provisions of an agreement for consent election in Case No. 21-RM-280 an election was held, a majority of valid ballots was cast for the Union and, pursuant to

General Counsel's Exhibit No. 1-E—(Continued)  
Section 9 (a) of the Act, the Union is the exclusive representative of all the employees defined in paragraph 5 above for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

7. Respondent, while engaged in business as described above, on or about November 10, 1954, and at all times thereafter did refuse and fail and does now refuse and fail to bargain collectively in good faith with respect to rates of pay, wages, hours of work and other conditions of employment with the Union as the exclusive representative of all employees in the unit set forth in paragraph 5 above.

8. By the acts set forth in paragraph 7 above, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8 (a), subsection (5) of the Act.

9. Respondent's operations are seasonal beginning normally in August of each year and ending normally in May of the following year.

10. Since about 1945 Respondent has had a policy of recognizing seniority by classifications, employees retaining their seniority from one season to the next.

11. On December 27, 1951, the Union, under its previous name of United Fresh Fruit and Vegetable Workers Local Industrial Union #78, Congress of Industrial Organizations, was certified as representative of Respondent's employees pursuant to a consent election in Case No. 21-RC-2274.

## General Counsel's Exhibit No. 1-E—(Continued)

12. On October 28, 1952, Respondent and the Union entered into a contract effective from July 1, 1952, to July 1, 1953.

13. The agreement of October 28, 1952, provided in part as follows:

“Section 1.

“Seniority shall be obtained for the purposes of this agreement, when the employee has been employed by the Association for a period of not less than twelve (12) weeks or fifty-one per cent (51%) of the season. Any and all seniority heretofore acquired by employees shall remain in full force and effect. All other employees employed by the Association shall be known as ‘temporary employees.’

“Seniority shall apply only to job classifications covered by this agreement.

“Section 2.

“In the event of layoffs or rehiring, seniority on a job classification basis shall be the determining factor.”

“Section 4.

“Association shall mail notices of each season's opening date to employees two (2) weeks prior to the beginning of each season and each such employee shall sign the Association's avail-

General Counsel's Exhibit No. 1-E—(Continued)  
ability sheet or send a reply by mail within one  
(1) week after the mailing of such notices, de-  
claring his availability.

“Section 5.

“Whatever seniority an employee has is lost  
if he

“(a) is not able to perform his usual duties.

“(b) is discharged for a just cause.

“(c) voluntarily leaves the employment of  
the Association without a written leave of ab-  
sence.

“(d) fails to give notice and report as re-  
quired under this section.

“Section 6.

“The seniority of employees shall be on a job  
classification basis.”

14. The seniority provisions set forth in para-  
graph 13 hereof substantially define the seniority  
policy of Respondent between 1945 and 1952.

15. The contract of October 28, 1952, expired,  
following proper statutory notice on July 1, 1953,  
and was not renewed or extended.

16. On December 1, 1953, following an impasse  
in negotiations, the Union called a strike against  
Respondent.

17. On December 8, 1953, the Union terminated  
the strike.



## General Counsel's Exhibit No. 1-E—(Continued)

18. During the strike Respondent continued to operate with non-strikers and some replacements.

19. On or about December 8, 1953, substantially all strikers applied unconditionally for reinstatement.

20. Until the close of operations in March, 1954, Respondent continued to observe the seniority policy described in paragraph 13 hereof.

21. In August, 1954, Respondent adopted a new seniority policy as follows:

(a) Non-strikers with seniority retained all seniority to their original hiring dates.

(b) Non-strikers ("temporary employees") without seniority were granted seniority based on their original hiring dates.

(c) Replacements were granted seniority based on their original hiring dates.

(d) Strikers who returned to work after December 8 were deprived of all accrued seniority and were assigned new seniority dates based on the date of their return to work after the strike.

(e) All other strikers were deprived of all seniority.

22. Respondent in its operations since August, 1954, has used the policy described in paragraph 21 hereof in rehires and layoffs.

## General Counsel's Exhibit No. 1-E—(Continued)

23. By the acts set forth in paragraphs 21 and 22 hereof, Respondent has discriminated against striking employees because they engaged in protected concerted activities and to discourage membership in the Union, and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Sections 8 (a) (1) and 8 (a) (3) of the Act.

24. By the acts set forth in paragraphs 7, 21 and 22 hereof, Respondent has interfered with, coerced and restrained, and is interfering with, coercing and restraining its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and Respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

25. The acts of Respondent set forth in paragraphs 7, 21 and 22 hereof, occurring in connection with the operations of Respondent described above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

26. The acts of Respondent set forth in paragraphs 7, 21 and 22 hereof constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subsections (1), (3) and (5), and Section 2, subsections (6) and (7) of the Act.

General Counsel's Exhibit No. 1-E—(Continued)

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the Twenty-first Region, this 21st day of October, 1955, issues this Complaint against California Date Growers Association, Respondent herein.

/s/ GEORGE A. YAGER,  
Acting Regional Director, National Labor Relations  
Board, Twenty-first Region.

Admitted in evidence Jan. 9, 1956.

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#### GENERAL COUNSEL'S EXHIBIT No. 1-V

[Title of Board and Cause.]

#### FIRST AMENDED ANSWER

Comes now California Date Growers Association, the Respondent, by and through its attorneys, Best, Best & Krieger, by John D. Babbage, and for answer to the complaint heretofore filed in this cause, admits, denies and alleges as follows:

1. Respondent admits the allegations in paragraphs 1, 2, 3 and 4 of said complaint.

2. Respondent admits the allegations in paragraph 5 in said complaint, but alleges that all janitors were also excluded from the unit appropriate for the purpose of collective bargaining.



## General Counsel's Exhibit No. I-V—(Continued)

3. Answering paragraph 6, Respondent admits that on October 21, 1954, the Acting Regional Director certified that pursuant to the terms and provisions of an agreement for consent election in Case No. 21-RM-280 an election was held and that said Acting Regional Director further certified that a majority of valid ballots was cast for the Union. Respondent denies generally and specifically that a majority of valid ballots was in fact cast for the Union and denies generally and specifically that the Union is the exclusive representative of all the employees defined in paragraph 5 of the complaint for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

4. Respondent denies the allegations in paragraphs 7 and 8 of said complaint.

5. Respondent admits the allegations in paragraph 9 of said complaint, insofar as said allegations allege that the Respondent's operations are seasonal; Respondent denies that the season normally begins in August and normally ends in May, and alleges the seasonal operations normally begin in September of each year and normally end in March of the following year.

6. Respondent denies the allegations of paragraph 10 of said complaint; Respondent alleges that prior to and since 1945 Respondent has used a priority list in filling available seasonal job openings.

## General Counsel's Exhibit No. I-V—(Continued)

7. Respondent admits the allegations of paragraphs 11, 12 and 13 of said complaint.

8. Respondent denies the allegations of paragraph 14 of said complaint.

9. Respondent admits the allegations of paragraphs 15, 16, 17 and 18 of said complaint.

10. Respondent denies the allegations of paragraphs 19 and 20 of said complaint.

11. Respondent denies the allegations of paragraph 21 of said complaint; Respondent alleges that a list of employees was made prior to the beginning of the 1954-55 season to enable the Respondent to have employees available to operate Respondent's business during the critical seasonal period when it packs, ships and sells its product. Said list included in the order stated the following:

- (a) Employees who did not go out on strike.
- (b) Employees who returned to work during the strike.
- (c) Employees who were employed during the strike as replacements.
- (d) Employees who returned to work at the conclusion of the strike.

12. Respondent denies the allegations of paragraph 22 of said complaint; Respondent alleges that its operations are seasonal in nature; there is extreme heat at certain times of the year at Respondent's place of operations in the Coachella Valley

General Counsel's Exhibit No. I-V—(Continued)  
and it is an area of limited population. These factors cause an annually high turnover of employees in Respondent's operations. All available qualified employees are hired at or near the beginning of each season's operations. Because of the high turnover of employees, neither the categories of employees set forth in paragraph 21 of the complaint on file herein, even if said categories were correct, nor the categories set forth in paragraph 21 of this answer are descriptive of the employees presently working for Respondent.

13. Respondent denies the allegations in paragraphs 23 and 24 in said complaint. Respondent alleges that it has done no acts, nor has Respondent intended to do any acts to discourage membership in the Union; that any and all of the acts of Respondent were done solely for legitimate business purposes.

14. Respondent denies the allegations of paragraph 25 of said complaint, but admits that the operations of Respondent have a substantial relationship to trade, traffic and commerce among the several States of the United States.

15. Respondent denies the allegations of paragraph 26 of said complaint.

BEST, BEST & KRIEGER,

By .....,

JOHN D. BABBAGE,

Attorneys for Employer.

General Counsel's Exhibit No. I-V—(Continued)  
State of California,  
County of Riverside—ss.

James F. Wright, being sworn, says: That he is the General Manager of the California Date Growers Association, a corporation, the above-named Respondent, and is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing First Amended Answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

.....

Subscribed and sworn to before me this 10th day of January, 1956.

J. D. BABBAGE,  
Notary Public in and for Said  
County and State.

Admitted in evidence Jan. 1, 1956.

118 NLRB No. 29

Indio, Calif.

United States of America  
Before the National Labor Relations Board

Case No. 21-CA-2130

CALIFORNIA DATE GROWERS ASSOCIA-  
TION

and

UNITED PACKINGHOUSE WORKERS OF  
AMERICA, AFL-CIO, LOCAL UNION  
No. 78<sup>1</sup>

### DECISION AND ORDER

On February 20, 1956, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not violated the Act in certain other respects. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs. The Respondent also filed a reply brief.<sup>2</sup>

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<sup>1</sup>Herein called the Union.

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<sup>2</sup>The Respondent's request for oral argument is hereby denied as the record, exceptions, and briefs, in our opinion, adequately present the issues and positions of the parties.



The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only insofar as they are consistent with our decision herein.

1. We find in agreement with the Trial Examiner that the Respondent on and after November 10, 1954, refused to recognize and bargain with the Union as the exclusive representative of its employees in the unit set forth in the consent election agreement of the parties and thereby violated Section 8 (a) (5) and (1) of the Act. The Respondent refused to bargain on the ground that the Regional Director acted arbitrarily and capriciously in deciding that the ballots of the 12 nonreplaced economic strikers who refused jobs on the night shift established in January, 1954, should nevertheless be counted toward the Union's certification of October 21, 1954, because under the facts of this case they retained their employee status. The Respondent also contended that the certification was not valid for the additional reason that the Regional Director permitted the challenged ballots to be opened and counted in the absence of the Respondent.

With respect to the Respondent's contention that the 12 laid off strikers who were on the day shift before the strike of December 1-8, 1953, lost their

employee status and were not entitled to vote in the election as a result of their rejection of assignment to the night shift, the Trial Examiner points out with ample support from the record that it was the Respondent's prior practice to permit daytime employees to decline night shift work without loss of their status as employees. Although there was testimony by Respondent's General Manager James F. Wright at the 1954 hearing on objections that in past seasons daytime employees who did not accept such assignments were the last hired and the first to be laid off, this means only that relative position on the seniority list but not employee status as such would be affected by an employee's refusal to transfer from the day shift.

As for the Respondent's contention concerning the impropriety of opening and counting challenged ballots in the absence of its representative, the record shows that despite adequate notice to the parties that the conference for that purpose would be held in the Board's Regional Office at 2:00 p.m., October 19, 1954, the Respondent's counsel did not appear until shortly after 2:30 p.m., and the Respondent's general manager, although present on time, nevertheless did not identify himself or indicate his desire to attend the conference as the Respondent's representative. As the Trial Examiner found, the counting of the ballots was delayed by the Board agent until 2:15 p.m. Moreover, when the Respondent's counsel did arrive, he was given an opportunity by the Board agent to examine the ballots as well as the tallies.

Accordingly we find, as did the Trial Examiner, that the Regional Director did not act arbitrarily or capriciously in certifying the Union with which the Respondent refused to bargain in violation of Section 8 (a) (5) and (1) of the Act.

2. We also agree with the Trial Examiner that Respondent's conduct in removing from its revised seniority list of March 18, 1954, the names of all striking employees who had not worked during the 1953-54 season, including the 12 employees who refused work on the night shift, constituted discrimination against these employees in violation of Sections 8 (a) (3) and (1) of the Act. Like the Trial Examiner, we find no merit in Respondent's argument that the 12 employees who refused to work on the night shift had thereby quit their employment. The record is clear that if these employees had been working instead of striking the Respondent would not have regarded their refusal to work the night as a quitting. Nor would the Respondent have denied preferential hiring status to other employees, who had worked during a prior season, but did not work during or since the strike but for their participation in the strike. As indicated above and in the Intermediate Report, the Respondent refused to bargain with the Union following its certification by the Regional Director in a new election after the unsuccessful strike of December 1-8, 1953. The Respondent's alleged reason for this refusal is that the Regional Director acted arbitrarily and capriciously in certifying the Union. The record, however, as the



Trial Examiner found, shows that the Regional Director acted most properly and reasonably in all respects. The Respondent's entirely unjustified refusal to bargain and its conduct in discriminating against the above employees, supported neither by economic nor other valid reasons, persuade us that it was motivated by a desire to avoid all bargaining with the Union and to punish those employees who had not returned to work during or since the strike.

3. We do not agree with the Trial Examiner that the evidence in this case is insufficient to establish the Respondent's unlawful motivation in reducing the seniority of striking employees below that of nonstrikers and replacements. While the Respondent contends that this action was necessary for economic reasons, the record shows that the new seniority policy was not announced until the Respondent published its hiring list of March 18, 1954, more than three months after the strike was ended. Contrary to the Trial Examiner, we regard this fact as a material distinction between the instant case and the *Potlatch* decision<sup>3</sup> upon which the Respondent relies. Our view in this respect has recently been affirmed by the Supreme Court of the United States, affirming the decisions of the Board and the Court of Appeals for the Fourth Circuit.<sup>4</sup> In determining

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<sup>3</sup>*N.L.R.B. v. Potlatch Forests, Inc.*, 189 F. 2d 82 (C.A. 9).

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<sup>4</sup>*Mathieson Chemical Corporation and/or Olin Mathieson Chemical Corporation*, 114 NLRB 486, enf'd F. 2d 158 (C.A. 4), affirmed Feb. 28, 1957 (Supreme Court No. 153).

Respondent's motivation for this action it is, we believe, particularly significant that the Respondent, as we have found in agreement with the Trial Examiner, unlawfully discriminated against other employees who had not worked during or since the strike by publishing this very same list. Its refusal to bargain in violation of Section 8 (a) (5) of the Act upon grounds totally lacking in merit is equally relevant. Such clear and unwarranted violations of the Act cannot be ignored in assessing Respondent's motivation for an additional act of discrimination, occurring exactly at the same time and by exactly the same means. Certainly, the violations of Sections (8) (a) (5), (3) and (1) of the Act, found by the Trial Examiner, conflict with his conclusion that there is "no evidence of anti-union bias on the part of this Respondent." It is true that the Respondent consented to an election when the strike was over and the Union sued for reinstatement. Consent to an election, however, does not establish Respondent's good faith when, as it had good reason to believe after the unsuccessful strike, the result might well have been adverse to the Union. Nor does the fact that Respondent was willing to reinstate some employees after the strike exonerate it from lesser acts of discrimination against them.

In support of its position that the seniority policy was adopted for economic reasons as a means of continuing its business during the strike, Respondent's general manager, James F. Wright, testified that when individual nonstrikers or replacements

expressed concern over their job security during the strike he told them they had become the "nucleus of our work force" and "gave them the assurance they would be maintained if and when the strike was terminated." At no time, however, did Wright or any other representative of the Respondent inform any employee until the March 18, 1954, list was published that the actual seniority of the striking employees would be reduced below that of the non-strikers and replacements. Nor do we believe that such a commitment can reasonably be inferred from Wright's general assurances to the latter employees that they would be "maintained" when the strike was terminated. Such employees, of course, are normally concerned with job continuity and would seek assurance that their services would not be terminated at the conclusion of the strike in the event a successful union sought their ouster. In our opinion, it was this type of assurance, and no more, that Wright offered them. If the Respondent chose to replace permanently the economic strikers with those employees who continued to work during the strike, the former employees to the extent that they were permanently replaced would under established law<sup>5</sup> not be entitled to reinstatement to the detriment of their permanent replacements. This is not to say, however, that the Respondent after the strike was over could go further than that and reduce the seniority of the returning strikers, who had not been

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<sup>5</sup>N.L.R.B. v. Mackay Radio and Telegraph Company, 304 U.S. 333.

replaced, to punish them because they had engaged in protected concerted activity.

The General Counsel points out, as Wright conceded in his testimony, that he did not mention a word about loss of seniority to those strikers who were offered reinstatement after the strike. Respondent's purpose in remaining silent about so crucial a matter was, according to Wright's testimony, a desire not "to agitate that situation at the time they return" because, as he expressed it, "You are interested in business continuing." The foregoing tends to establish the fact that no super-seniority policy was initiated by the Respondent until after the strike had terminated, because it is evident from the testimony that the Respondent did not want to "agitate the situation" and that it was "interested in business continuing," and, moreover, the record is devoid of any evidence indicating that the Respondent found it necessary to promise super-seniority to its employees in order to continue operations. In these circumstances, for the Respondent to have made such a promise of superseniority during the strike would not only have tended to "agitate the situation" but it might well have tended to prolong the strike and thus greatly hamper the continuation of the Respondent's business. Moreover, the General Counsel points to further evidence that no such policy was formulated or adopted by the Respondent until long after the strike was over. Thus, Florence E. Hawkins, Respondent's personnel chief most closely associated with carrying out the



Respondent's seniority policy, was not apprised of the new policy until February, 1954. Hawkins, herself, admitted that in January, 1954, in response to one striker's (Kathryn White) inquiry concerning her seniority status, she (Hawkins) "did not know" and "couldn't tell her (White) a thing about it." Moreover, the old prestrike 1952-1953 seniority list remained posted after the strike and was used by the Respondent in recalling strikers during the balance of the 1953-54 season. The revised seniority list of March 18, 1954, was itself not prepared until virtually the close of the 1953-1954 season.

On the basis of the foregoing we find, contrary to the Trial Examiner, that the Respondent did not adopt a new seniority policy until after the strike was over and that its purpose in reducing the seniority of the strikers was to punish them because they chose to strike rather than work. We find that the Respondent thereby violated Sections 8 (a) (3) and (1) of the Act.<sup>6</sup>

4. We agree with the Trial Examiner's finding that the aptitude tests, which was instituted on an experimental basis by the Respondent for the 1954-

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<sup>6</sup>Mathieson Chemical Corporation and/or Olin Mathieson Chemical Corporation, *supra*.

In view of our decision herein, we find it unnecessary to and do not pass upon the applicability of the Board's decision in *Potlatch Forests, Inc.*, 87 NLRB 1193, reversed by the Court of Appeals for the Ninth Circuit, *N.L.R.B. v. Potlatch Forests, Inc.*, *supra*, in which the employer's policy of superseniority for nonstrikers was advocated before the strike was

1955 season and administered by the California Bureau of Employment, were not discriminatorily applied against participants in the strike of December, 1953. The General Counsel in his exceptions contends that the Respondent's action in requiring strikers who had been deprived of their seniority to pass the tests as a condition of employment, while not constituting an independent violation, was merely additional evidence of discrimination with respect to seniority.

The record shows that all strikers reinstated during the 1953-1954 season were on the March 18, 1954, seniority list and that in common with nonstrikers and replacements appearing on the list they were not required to take the aptitude tests before going to work. A number of these employees, including an indeterminate number of strikers, were required to take the tests thereafter. The record shows, however, that none of these employees suffered a loss of employment as a consequence thereof. It also appears that some of the employees on the list were not required to take the tests at any time. In this connection the record does not show that the Employer treated strikers and nonstrikers on the list differ-

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settled and adopted at the time of settlement. However, Member Murdock, with due deference to the Court of Appeals for the Ninth Circuit, disagrees with the Court's Potlatch holding and would in accordance with the Board's own Decision in that case find that the Respondent's superseniority policy was unlawful without regard to whether it was adopted during or after the strike.

ently by requiring that the former, but not the latter, take the test after going to work. All strikers not on the list were required to take the tests, a number of them before returning to work. Only employees not on the list were denied employment on the ground that they had failed the tests. While this evidence raises some suspicion as to the motivation of the Employer in adopting a policy of aptitude tests for some employees, but not others, at this time, we are of the opinion that the evidence is insufficient to warrant a conclusion that the difference in treatment accorded employees was unlawful discrimination motivated by employees' strike activity.

### The Remedy

As we have found in agreement with the Trial Examiner that the Respondent refused to bargain with the Union which was properly certified as the representative of its employees in an appropriate unit, we shall order the Respondent to bargain with the Union.

As we have found that the Respondent engaged in unlawful discrimination by (1) reducing the seniority of all reinstated strikers, and (2) excluding from the March 18, 1954, seniority list the 12 nonreplaced strikers who refused employment on the January, 1954, night shift, and all other nonreplaced strikers who were not reinstated during the balance of the 1953-1954 season, we shall order restored to their prestrike seniority all nonreplaced

strikers who were on the prestrike 1952-1953 seniority list except the 12 employees declining the night shift assignment. In view of Manager Wright's testimony that in past seasons employees refusing night shift work were the last hired and the first to be laid off, we shall order that the 12 employees be given only reduced seniority and a place at the bottom of the March 18, 1954, seniority list.

We shall also order reinstatement on the basis of the restored seniority of the discriminatees. Although the Trial Examiner refused to recommend a back pay order at the request of the General Counsel on the ground that there was an absence of evidence of monetary losses incurred by employees as a result of the discrimination, we find merit in the General Counsel's contention that, as the Trial Examiner found, the record discloses that fluctuations normally occur during the Respondent's seasonal operations which involve layoffs and the recall of employees on the basis of seniority. Accordingly, we shall order back pay in those cases where seasonal hiring has been delayed, or seasonal layoffs have been accelerated, or where there has otherwise been a loss of employment as a result of the Respondent's seniority policy.

As we agree with the Trial Examiner that the Respondent has not discriminated against strikers by requiring aptitude tests, we shall not order the Respondent to cease and desist from continuing to require such tests.



In view of our findings concerning the Respondent's refusal to bargain, and particularly the Respondent's unlawful seniority policy, we find, contrary to the Trial Examiner, a potential threat of future violations and shall therefore include below a broad cease and desist order.

### Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that California Date Growers Association, Indio, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Packinghouse Workers of America, AFL-CIO, Local Union No. 78, as the exclusive representative of all employees in the unit found in the Intermediate Report to be appropriate, with respect to rates of pay, wages, hours of work, and other conditions of employment.

(b) Discouraging membership in or activities on behalf of the above-named labor organization, or any other labor organization, by discriminatorily reducing the seniority of employees or entirely depriving them of seniority status, or in any like or related manner discriminating in regard to hire and tenure of employment, or any terms or conditions of employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form and join labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of employees in the unit described in the Intermediate Report with respect to their rates of pay, wages, hours of work, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Rescind forthwith its discriminatory seniority policy as represented by its March 18, 1954, seniority list;

(c) Restore to their prestrike seniority all non-replaced strikers who sought reinstatement at the end of the December 1-8, 1953, strike and were on the 1952-1953 seniority list, except the 12 employees

who refused work on the night shift of January, 1954. Restore the 12 employees to reduced seniority at the end of the March 18, 1954, seniority list;

(d) Offer to the discriminatees reinstatement on the basis of their restored seniority;

(e) Make whole the discriminatees whose seasonal hiring was delayed, or whose seasonal layoffs were accelerated, or who otherwise suffered loss of employment because of the Respondent's seniority policy;

(f) Upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due under the terms of this order;

(g) Post at its place of business in Indio, California, copies of the notice attached hereto and marked "Appendix."<sup>7</sup> Copies of the notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) days thereafter in conspicuous places, including all places

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<sup>7</sup>If this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(h) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated Washington, D. C., June 21, 1957.

.....,  
BOYD LEEDOM,  
Chairman;

.....,  
ABE MURDOCK,  
Member;

.....,  
PHILIP RAY RODGERS,  
Member;

.....,  
STEPHEN S. BEAN,  
Member;

[Seal]

NATIONAL LABOR  
RELATIONSE BOARD.

## Appendix

Notice to All Employees  
Pursuant to  
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will bargain collectively, upon request, with United Packinghouse Workers of America, AFL-CIO, Local Union No. 78, as the exclusive representative of employees in the appropriate unit with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The appropriate unit is:

All packing shed employees employed at the Indio, California, packing shed, excluding all office and clerical employees, and also excluding watchmen, guards, supervisors and professional employees as defined in the National Labor Relations Act.

We Will Not discourage membership in the above-named labor organization, or in any other labor organization by discriminating with respect to seniority or any term or condition of employment.



We Will Not, in any manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will rescind our discriminatory seniority policy, as represented by the March 18, 1954, seniority list.

We Will restore all nonreplaced strikers who applied for reinstatement at the end of the strike of December 1-8, 1953, except the 12 employees who refused assignment to the night shift of January, 1954, to their prestrike seniority as indicated on the 1952-1953 seniority list. We will restore these 12 employees to reduced seniority at the end of the March 18, 1954, seniority list.

We Will offer the discriminatees reinstatement on the basis of their restored seniority status.

We Will make the discriminatees whole for any loss of pay suffered as a result of the discrimination against them.



All our employees are free to become or remain members of the above-named or any other labor organization. We will not discriminate in regard to hire or tenure of employment against any employees because of membership in or activity on behalf of any such labor organization.

CALIFORNIA DATE GROW-  
ERS ASSOCIATION,  
(Employer.)

Dated .....

By .....,  
(Representative.) (Title.)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

ERRATUM

The Intermediate Report and Recommended Order in the subject case is corrected as follows:

The last sentence of footnote 16, pages 13, 14, is corrected to read:

Other cases, cited by the General Counsel, in which labor organizations have been found to have violated the Act by causing an employer to discriminate with respect to seniority, are

inapposite because of express limitations stated in Section 8 (b) (2) and the proviso of Section 8 (a) (3) of the Act. Minneapolis Star and Tribune Company, 109 NLRB 727; Pacific Intermountain Express Company, 107 NLRB 837.

Dated at San Francisco, California, this 28th of February, 1956.

/s/ WILLIAM E. SPENCER,  
Trial Examiner.

[Title of Board and Cause.]

Before: William E. Spencer, Trial Examiner.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act (61 Stat. 136), herein called the Act, against the Respondent, California Date Growers Association, Indio, California, upon charges filed by the Union, United Packinghouse Workers of America, AFL-CIO, Local Union No. 78, and upon complaint and answer, was heard, upon due notice, in Riverside, California, on January 9, 10, 11, 12, 1956. The allegations of the complaint, denied by the answer, are, in substance, that in violation of Section 8 (a) (1) and (5) of the

Act, the Respondent on and after November 10, 1954, refused to bargain with the Union, the duly constituted representative of a majority of its employees in an appropriate unit, and in violation of Section 8 (a) (1) and (3), discriminated against certain of its employees by reducing their seniority or depriving them of seniority status for the reason that they had participated in a strike against the Respondent.

All parties were represented at the hearing, participated, and were afforded full opportunity to present and to meet material evidence and to engage in oral argument and to file briefs. There was oral argument at the close of the hearing and briefs have since been submitted by the General Counsel and the Respondent.

Upon consideration of the entire record in the case and from my observation of the witnesses, I make the following:

### Findings of Fact

#### I. The Business of the Respondent

The admitted facts on commerce are:

The Respondent is a California corporation with a packing house in Indio, California, where it is engaged in the business of processing and packaging dates and date products. It annually ships from its Indio plant to points outside the State of California dates and date products of a value in excess of \$50,000.

On these facts it is admitted, and is found, that Respondent is engaged in commerce within the meaning of the Act to an extent to bring it within the Board's current formula for asserting jurisdiction.

## II. The Labor Organization Involved

The Union is a labor organization within the meaning of the Act, admitting to membership employees of the Respondent.

## III. The Unfair Labor Practices

### A. Prefatory Note

The Respondent's business of processing and packaging dates is seasonal. The season normally opens in late August or early September and closes in the spring of the following year. Total employment varies both during season and as between seasons. The seasonal peak is reached in late November or December, and at such times Respondent is normally able to employ all qualified persons seeking employment with it. Beginning operations are governed by the amount of dates carried over from the previous season and prevailing crop conditions. Normally, packers are the first to be called, and a single line of operations is started; at the seasonal peak there maybe three lines of operations and a night shift. Preliminary to starting operations, employees who had acquired seniority status the previous season are contacted by telephone; in 1952, notice of starting operations was mailed to persons

carried on Respondent's payroll the preceding season. Regardless of seniority status, applications are required at the start of the season in order to determine current availability for employment. Both before Respondent's 1952 contract with the Union and under it, employees who had acquired seniority status in one season were given preferential hiring status over new applicants for employment. In short, an employee who acquired seniority status in one season had a reasonable expectancy of employment in the next succeeding season. Seniority<sup>1</sup> traditionally and under the union contract was on a departmental basis.

## B. Chronological and Other Findings of Fact

1. On December 27, 1951, the Union, under its previous name of United Fresh Fruit and Vegetable Workers Local Industrial Union 78, Congress of Industrial Organizations, was certified as representative of Respondent's employees in an appropriate unit,<sup>2</sup> pursuant to a consent election in Case No. 21-RC-2274.

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<sup>1</sup>Respondent used the term "priority" rather than "seniority" as descriptive of its system of recall outside the union contract. For the most part the terms are used interchangeably herein.

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<sup>2</sup>The unit agreed upon, and found to be appropriate, was and is: All packing shed employees employed by the Respondent at its Indio, California, packing shed, excluding all office and clerical employees, and also excluding watchmen, guards, supervisors and professional employees as defined by the Act.



2. On October 28, 1952, Respondent and the Union entered into a contract effective from July 1, 1952, to July 1, 1953.

3. The agreement of October 28, 1952, provided in part as follows:

“Section 1:

“Seniority shall be obtained for the purposes of this agreement, when the employee has been employed by the Association for a period of not less than twelve (12) weeks or fifty-one per cent (51%) of the season. Any and all seniority heretofore acquired by employees shall remain in full force and effect. All other employees employed by the Association shall be known as ‘temporary employees.’

“Seniority shall apply only to job classifications covered by this agreement.

“Section 2:

“In the event of layoffs or rehiring, seniority on a job classification basis shall be the determining factor.

“Section 4:

“Association shall mail notices of each season’s opening date to employees two (2) weeks prior to the beginning of each season and each such employee shall sign the Association’s availability sheet or send a reply by mail within one



(1) week after the mailing of such notices, declaring his availability.

“Section 5:

“Whatever seniority an employee has is lost if he

“(a) is not able to perform his usual duties.

“(b) is discharged for a just cause.

“(c) voluntarily leaves the employment of the Association without a written leave of absence.

“(d) fails to give notice and report as required under this section.

“Section 6:

“The seniority of employees shall be on a job classification basis.”

4. The contract of October 28, 1952, expired on July 1, 1953, and was not renewed nor extended.

5. On December 1, 1953, following an impasse in negotiations, the Union called a strike against Respondent.

6. On December 8, 1953, the Union terminated the strike.

7. During the strike Respondent continued to operate with nonstrikers and some replacements.

8. On December 8, 1953, substantially all those who had been on strike signed an availability list

list amounting to an unconditional application for reinstatement.

9. On and/or after December 8, 1953, and during the 1953-1954 seasonal operations, a substantial number of former strikers were reinstated though not all of them for the reason that there were not job openings for all of them.

10. Strikers were reinstated in the order of their seniority as determined by seniority lists existing at the time of the strike and formulated pursuant to seniority provisions of the 1952-1953 contract. This is referred to herein as the 1952-1953 seniority list.

11. On or about January 18, 1954, Respondent started a new production line on its night shift, and in their order of seniority as set forth above, proffered these jobs to former strikers who had not as yet been reinstated.

12. 12 employees offered work on the night shift refused the offer for personal reasons.

13. On February 5, 1954, a consent election agreement between Respondent and the Union was approved by the Board's Regional Director, and on February 18, 1954, an election on the basis of the consent agreement was conducted by the Board's agents. Case No. 21-RM-280.

14. At the February 18 election, the Respondent challenged the right to vote of the 12 employees who had been offered, and who had refused, work on the night shift, on the grounds that the said refusals constituted a quitting of their employment.

15. On March 24, 1954, the Board's Regional Director having found that the challenged ballots could determine the election results, and having conducted an investigation of the Respondent's claim, overruled the Respondent and issued a direction that the challenged ballots be counted.

16. The Respondent having filed exceptions to the Regional Director's Report, the latter on April 22, 1954, directed a hearing on the challenges. This hearing was held on April 29, 1954.

17. On October 5, 1954, on consideration of the transcript of the April 29, 1954, proceedings, and briefs filed by Respondent and the Union, the Regional Director issued his supplemental report on challenges in which it was again directed that the challenged ballots in question be counted.

18. On October 19, 1954, a revised tally was made including the counting of the challenged ballots.

19. Following this revised tally, which showed a majority in favor of the Union, and on October 21, 1954, the Regional Director certified the Union as bargaining representative of employees in the appropriate unit as set forth in the Consent Election agreement.

20. The Respondent thereafter filed objections to conduct affecting results of the election and these objections were in effect overruled by the Regional Director by letter dated October 27, 1954.

21. By letter dated October 22, 1954, the Union requested a meeting with Respondent for purposes

of collective bargaining. A second letter dated November 2 reiterated the request. Representatives of the parties did meet on November 10, but it is clear that neither at this meeting nor at any subsequent time did the Respondent agree to recognize the Union's certification by the Board's Regional Director as binding on it or enter into collective bargaining with the Union as the certified representative of its employees.

22. At the hearing in the instant proceedings the Respondent admitted its refusal to recognize and bargain with the Union subsequent to its certification.

### C. The Issues

#### (1) The Refusal to Bargain

On the basis of items 21 and 22 of the chronological findings above, it is found that on and after November 10, 1954, the Respondent has refused to recognize and bargain with the Union. Respondent's contention is that the 12 former strikers who were offered and, for personal reasons, refused jobs on the night shift, quite their employment and because of that quitting thereafter had no employee status justifying their participation, as voters, in the consent election of February 18, 1954, and that in directing that their ballots, challenged by Respondent,<sup>3</sup> be opened and counted, the Regional Director

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<sup>3</sup>There were other challenged ballots but they are not an issue here and I shall not further refer to them.

acted arbitrarily and capriciously.<sup>4</sup> If Respondent is correct in this latter contention, the certification of the Union was invalid because except for a tally of the 12 challenged ballots the Union would not have received a majority of votes cast. If the certification was invalid the Respondent was under no duty to recognize and bargain with the Union.

The issue is not whether the Regional Director was right or wrong in determining that the twelve employees in question were eligible to vote. By the terms of the consent election agreement his decision was "final and binding." Having signed this agreement the Respondent, as a party to it, has no right to question the soundness of his judgment, as such, but, under the decisions, may show that in so deciding the Regional Director acted arbitrarily and capriciously.<sup>5</sup> There are a number of ways in which this might be shown, such as a one-sided investigation, a refusal to permit the Respondent to present evidence supporting its position, or a decision based on no evidence of a probative character.

There was nothing arbitrary or capricious in the procedures followed by the Regional Director with respect to the challenged ballots. As to the election

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<sup>4</sup>Actually, a Regional Director made the initial determination and an Acting Regional Director made the final determination. The matter being of no consequence, for convenience I shall refer to each as the Regional Director.

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<sup>5</sup>*Elm City Broadcasting Corporation*, 111 NLRB 980, 981, and cases cited in footnote 3, p. 981, therein.



itself, all parties certified that it was fairly conducted. The Regional Director's initial determination that the challenged ballots should be counted, was based on an investigation in which representatives of the Respondent participated. The Respondent filed a memorandum with respect to its position in the matter. Thereafter, on receipt of the Regional Director's report on challenges, Respondent filed exceptions and requested a hearing. This request was granted. At the hearing, conducted by an attorney of the Regional Office, all parties were afforded full opportunity to submit evidence on their respective positions. The Respondent participated in this hearing, and thereafter filed a brief with the Regional Director. After an elapse of some six months, the Regional Director issued his supplemental report in which the ruling was again adverse to the Respondent. Thereafter, a conference was arranged for the opening and counting of the challenged ballots and a date and time was set, a postponement of the original date having been granted at Respondent's request.

Respondent complains that it was not actually present when the challenged ballots were opened and counted, and this is true. Respondent was not present because, though informed as to the date, the place and the time, Respondent's counsel did not appear on time and Respondent's general manager though present at the Board's offices where the ballots were opened and counted, did not identify himself in such manner that those responsible for han-



dling the ballots in question were aware that he was available. As a matter of fact, the counting of the ballots was delayed to allow for any ordinary tardiness on Respondent's part and proceeded only when it appeared that Respondent would not be present through its representatives. Obviously, there was nothing arbitrary or capricious here since it was Respondent's fault, and Respondent's alone, that it was not represented at the opening and counting of the challenged ballots, and, in any event, Respondent does not dispute the accuracy and bona fides of the count.

From the foregoing, it is clear that Respondent had a fair and full opportunity to present and amplify its position before the Regional Director before a final determination was made in the matter of the challenged ballots. It was not permitted to adduce any additional evidence in this proceeding because, obviously, the Regional Director could not have acted arbitrarily or capriciously on the basis of evidence that was not before him at the time he made his determination on the issue of the challenged ballots.

Turning now to the evidence upon which the Regional Director based his decision:

In the initial stage of his investigation affidavits were taken, and at the hearing granted at Respondent's request, the sworn testimony of Respondent's general manager, James F. Wright; plant, manager, Hillman Yowell, and personnel officer, Florence

Hawkins, as well as the testimony of several of the employees in question, was taken. From this testimony it appears that Respondent's operations normally opened with a day shift and then, as the work load increased, a night shift might be added; that at least the nucleus of the night shift was recruited from the day shift; that, on occasion, day shift workers would be given a choice of transferring to the night shift; that they were free to accept or refuse the transfer, and if they refused they were neither laid off nor discharged nor regarded as having quit their employment; that night shift work offered some advantages of advancement in job status and some priority in continuity of employment both as to the order of layoffs and order of recall in subsequent seasons. It is true that Wright testified that persons refusing night shift work were dropped from the "priority list" but in the context of his entire testimony and that of other witnesses, it is clear that being dropped from the "priority list" in the sense in which Wright used the term, did not mean the loss of employee status. He testified: "I wish to point out then \* \* \* that a person who wasn't willing to work nights, wasn't willing to work shorter weeks, wasn't willing to work during the hot weather, that that person wasn't laid off or fired because of it but they were the last hired and the first to be laid off."

From what is virtually an undisputed state of facts, it seems clear that had the 12 strikers in question been at work on the day shift at the time Re-

spondent offered them night shift work, their rejection of that offer would not have caused their layoff or discharge and would not have been regarded by the Respondent as a quitting. They were not actually working on the day shift at the time they were offered night shift work because they had been on strike and had not yet been reinstated. Absent a showing that they had been replaced or that their jobs had been abolished—and there was none—they occupied the same employee status when they were offered and refused night shift work that was theirs when they went on strike, and it appears that all of them were day shift employees at that time. [Section 2 (3) of the Act.] Their application for reinstatement did not place them in the category of new applicants for employment; they had acquired seniority status as shown by their placement on the 1952-53 seniority list, and they did not lose that status when they went on strike. The Respondent, however, appears to have treated them as new applicants for employment, without choice in the matter of accepting work on a night shift. The issue here is not whether their order on the seniority—or priority—list was affected but whether their employee status was wiped out by their refusal. Like the Regional Director I am convinced that it was not. If they had employee status they were entitled to vote, because the consent election agreement provided that those eligible to vote were:

All packing shed employees employed by the Employer at its Indio, California, packing shed

during the last complete payroll period in January, 1954, and including all persons whose names appear on the 1953 seniority list; but excluding any such persons who have been permanently replaced and those employees who have quit or have been discharged for cause, and have not been rehired or reinstated prior to the date of the election.

As previously stated, the names of all 12 employees in question appeared on the 1953 seniority list.

There is no evidence that any of the employees in refusing night shift work intended to quit, or did in fact quit, other than evidence of their rejection of night shift work for personal reasons. Nor do I think a voluntary yielding of their employee status can reasonably be inferred. Though, as testified to by Respondent's witnesses, night shift work may have offered exceptional opportunities for advancement and preferment in continuity of employment, women employees for innumerable personal reasons, such as arranging for care of children, might choose to forego such opportunities and remain on their day-time jobs. The Respondent doubtless was well aware of this and, being aware of it, never made it mandatory for a day shift worker to transfer to a night shift. Nor does the fact that in previous seasons certain of these 12 employees had accepted night work, or had indicated on their applications that they would accept night work, provide a sufficient basis



for an inference that in refusing such work in January, 1954, they quit, because circumstances change with the times and in January, 1954, they may have been confronted with a situation of personal convenience entirely different from the occasions when they actually worked on a night shift or indicated on their applications that night shift work would be acceptable. In this connection, it is significant that in making out applications required of all employees regardless of status at the start of a season, it was not required that an employee express a willingness or lack of it to work on a night shift, though the application forms made provision for such a statement, and employees whose application forms indicated that night shift work was not acceptable, were not thereby prejudiced in the order of their hiring. In short, there is no showing that any employee with seniority status lost that status by indicating that night shift work was not acceptable.

All reasonable inferences to be drawn from the testimony is that the 12 employees in question, in refusing night shift work, did not intend to quit, and in view of past practices it may not be inferred that they would reasonably believe that their refusal would have the effect of relinquishing their employee status. That all 12 of these employees had actually applied for reinstatement following the termination of the strike, and that some of them inquired concerning availability of day shift work at the time they refused the night shift offer, reveals

a state of mind inconsistent with a voluntary surrender of employee status. And, of course, the Respondent may not make that a quitting which lacks the assent of the person involved, either actual or implied. A quitting necessarily implies voluntariness on the part of one who quits.

One other matter raised before the Regional Director in support of Respondent's position, was that two of the 12 employees whose votes were challenged gave illness as a reason for refusing the offer of work on a night shift. Neither had applied for a leave of absence. A leave of absence was normally required of an employee absenting himself from work because of illness. By their failure to apply for a leave of absence, the Respondent argues, they lost their status as employees. Obviously, a leave of absence is not required of employees who are participating in a strike, or are laid off. A leave of absence can only mean a leave of absence from a state of actual employment. The two employees in question had the status of employees at the time they received the offer of night shift work but were not then actually working. Their regular jobs had not been abolished but were not then operative and therefore their status was analogous to that of laid off employees. If they were free to accept or reject night shift work and chose to reject it, they remained in the status of laid off employees and there was no occasion for them to apply for a leave of absence. The Regional Director found, and I have concurred in his finding, that employees with ac-



quired seniority status were not normally considered to have relinquished their status as employees when and by refusing work on a night shift.

From the foregoing and upon the entire record, it seems clear and is found, that in his decision on the challenged ballots the Regional Director did not act arbitrarily or capriciously, or upon insufficient or insubstantial evidence. His certification of the Union was therefore valid and binding upon the Respondent. Accordingly, it is found that by its refusal on and after November 10, 1954, to recognize and bargain with the Union as exclusive representative of its employees in the unit set forth in the consent election agreement and herein found to be appropriate,<sup>6</sup> the Respondent violated Section 8 (a) (1) and (5) of the Act.

## (2) Discrimination With Respect to Seniority

Prior to its contract with the Union, Respondent maintained a priority list which governed the order of layoffs during seasonal operations and rehiring at the start of a new season. Under its contract with the Union executed October 28, 1952, and expiring July 1, 1953, it was bound by the seniority system of that contract as set forth in Item 3 of the Chronology above. The priority list maintained prior to the contract, and the seniority list under it, followed the same general principles in method and order of compilation. Following the expiration of the contract Respondent continued seniority ratings

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<sup>6</sup>See footnote 2, *supra*.

as provided in the contract, at least up to the time of the December 1, 1953 strike. As previously stated, during the period of the strike from December 1 to December 8, the Respondent continued its operations with a working force composed of nonstrikers and a few replacements.<sup>7</sup> This was an economic strike and under the rule of the Mackay Radio case<sup>8</sup> the Respondent could lawfully hire new employees to fill the jobs of strikers. The General Counsel makes no issue of the five striking employees who were thus replaced.

Following the termination of the strike on December 8, and the unconditional offer to return to work made by the strikers on December 8, the Respondent reinstated all strikers for whom work was available and reinstated them in the order in which they appeared on the 1952-53 seniority list compiled under the Union contract. There is no contention made that any striking employee was denied reinstatement because of his or her union or concerted activities. Admittedly, however, all employees reinstated upon termination of the strike, were reduced in seniority below all employees who worked during the period of the strike. In short, while adhering to the old seniority list in the order of its reinstatement of striking employees, the Respondent in effect

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<sup>7</sup>Actually, only five strikers were replaced during the strike.

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<sup>8</sup>*N. L. R. B. vs. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 346.

adopted a new overall seniority policy upon termination of the strike, which had the necessary effect of penalizing strikers while rewarding nonstrikers, since thereafter, regardless of comparative seniority status at the time of and prior to the strike, all non-strikers were given seniority over all strikers. This new policy was given concrete expression in the compilation of a new seniortiy list dated March 18, 1954.

The reduction in seniority status was a matter of substance.<sup>9</sup> Fluctuations occur during Respondent's seasonal operations which involve layoffs and such layoffs are normally made on the basis of seniority—or priority—lists; at the start of a new season, employees are recalled in the order of their seniority. Obviously, therefore, the continuity and duration of employment is governed, in large measure, by seniority status. Lacking such evidential factors, it would, in any event, be inferred that involuntary reduction of seniority is discriminatory,<sup>10</sup> and this is true whether seniority follows contractual relationships or is unilaterally established by the employer. True, the Act does not confer seniority rights upon strikers, and such rights are usually

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<sup>9</sup>“Seniority rights are basic conditions of employment \* \* \*” *N. L. R. B. vs. Wheeling Pipe Line, Inc.*, decision of the U. S. Court of Appeals, Eighth Circuit, No. 15369, dated January 24, 1956; 37 LRRM 2403.

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<sup>10</sup>*N. L. R. B. vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, et al.*, 347 U. S. 17.

derived from union contracts,<sup>11</sup> but where there exists a seniority system, whether that system derives from contractual relationships or the unilateral action of the employer, the Act prohibits a discriminatory application of it where such application discourages or encourages membership in a labor organization. Here, at all times material to the issue, whether or not it was called that, there existed a seniority system, and when at the conclusion of the strike it was changed to the detriment of the strikers who had been permanently replaced, discrimination occurred. It is not necessary that proof be adduced that such discrimination actually discouraged union and concerted activities. The inference is inescapable.<sup>12</sup>

Not all acts, however, which have the necessary effect of discrimination against those engaged in protected concerted activities, are unlawful under the Act. An economic striker may be permanently replaced and thus lose his job because of having engaged in a strike, and such action while necessarily

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<sup>11</sup>*N. L. R. B. vs. Potlatch Forests, Inc.*, 189 F. 2d 82 (C. A. 9).

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<sup>12</sup>"Both the Board and the courts have recognized that proof of certain types of discrimination satisfies the intent requirement. This recognition that specific proof of intent is unnecessary where employer conduct inherently encourages or discourages union membership is but an application of the common law rule that a man is held to intend the foreseeable consequences of his conduct." *Gaynor News Company, Inc., et al., vs. N. L. R. B.*, 347 U. S. 17; 33 LRRM 2428.



and emphatically discouraging union activities, is lawful where it is consistent with, and because of the exercise of the employer's "right to protect and continue his business by supplying places left vacant by strikers." Mackay Radio, *supra*. Motive controls here because in this situation "the [employer's] true purpose is the object of investigation with full opportunity to show the facts." *N. L. R. B. vs. Jones & Laughlin Steel Corp.*, 301 U. S. 1. If the employer has the "right to protect and continue his business by supplying places left vacant by strikers," it would seem to follow that he has also the right to take such other action as he deems necessary "to protect and continue his business" in the face of an economic strike, providing his motive is, in fact, "to protect and continue his business," and not to retaliate against and punish his striking employees. Determining motive in a given situation frequently requires "a high degree of introspective perception"<sup>13</sup>, and this is true here where the discriminatory effect of the Respondent's action on seniority is apparent and substantial. There are certain objective factors present, however, which are invaluable in assessing motive.

Independent of the action with respect to seniority, there is no evidence of antiunion basis on the part of this Respondent. There is no evidence that this Respondent opposed the unionization of its employees, or was in any way hostile to it. Such elec-

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<sup>13</sup>*N. L. R. B. vs. Donnelly Garment Co.*, 330 U. S. 219, 123.

tions as were held were held pursuant to consent agreements. It is true that negotiation of an agreement to supersede the contract expiring July 1, 1953, reached an impasse and presumably to break that impasse in its favor the Union called a strike, but no refusal to bargain is charged and no inference of antiunion sentiment can rest on this state of facts. It may be assumed that the Respondent did not like it when its employees struck, but when they applied for reinstatement it took them back as fast as it had work for them to perform. With respect to its action in reducing the seniority of reinstated strikers, we have the undisputed testimony of its general manager, James F. Wright, that this action was taken for the purpose of reassuring its non-striking employees and replacements concerning the continuity of their employment, and because it considered such action essential to safeguard and protect its economic interests in continuing to operate during the strike.<sup>14</sup>

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<sup>14</sup>Excerpts from Wright's direct examination:

Q. Now, during the period that you were in operation, did you have conversations with the employees either directly or through representatives with respect to the status of the employees who remained and the status of employees who were employed and the status of employees who would come back to work?

A. Yes. I was in, you might say, constant touch with the employees during this period. In fact, I used to pick them up—quite a few of them up and escort them into work every morning, and was in contact not only with the employees who remained during the strike and those who were hired during



If there is something inherently false or specious in this position, I fail to discern it. The strike hit the Respondent when its seasonal operations were at their height since during the Christmas holidays Respondent's products are particularly in demand. It is not in the least incredible that nonstriking employees, and employees newly hired during the strike, would

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the strike, and also the ones that returned to work during the strike.

\* \* \*

Q. What did you do with respect to the [non-striking and newly hired] employees that I have described here?

A. Well, as would be natural under a trying situation, the employees would be concerned with their job security, and I assured them at the time that those who had remained through the strike, the replacements and the people who returned, that they would be—had become and would be treated as the nucleus of our work force; that we didn't know how long the strike would go on; that we intended to continue to operate the plant and receive and grade and pack and ship our dates, and that these people we felt were a necessary part of our business; and that I gave them the assurance they would be maintained if and when the strike was terminated.

\* \* \*

Excerpt from Wright's cross-examination:

Q. Anyway, what it comes down to is this, then: That when some of these people that worked during the strike came to you personally and wanted personal assurance that they would be taken care of after the strike, you gave it to them?

A. That's right.

Q. And that is about all it amounted to?

A. Well, you say that is about all. It was a pretty important thing for the people.

seek some assurance of preferred seniority status which would protect them from displacement by striking employees when and if the latter chose to return to their jobs, or that an employer would give such assurance if he felt it would bolster his economic situation. It is true that the Respondent did not call any of these employees to the witness stand to corroborate the testimony of its general manager,

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Q. It is very important to a girl who had no seniority and was working during the strike and wondered what would happen to her job when seniority employees offered to come back. I understand that. But I want to know whether your publication of your determination to protect these people went any farther than individual assurances.

A. I believe, Mr. O'Brien, that I talked—well, I know that during the strike I would talk to the working force that was there every day, and this was one of the primary things these people were concerned about, so I am sure they were advised of it in meetings of all the people who were at the plant. As I recall, I met—I had met with the graders and the people in that area of the plant in one meeting, and met with the packers and the people in the pitting department in that area of the plant at another meeting, but that was a daily occasion during the strike.

Q. That was to encourage them to get out production, let them know you were with them, is that it?

A. Well, it covered a lot of things.

Trial Examiner: Mr. Wright, do you have any distinct recollection whether, during any of these meetings that you had with the employees during the strike, whether you specifically mentioned the matter of their security to them? Do you have a recollection of it?

The Witness: Yes, I do.

but neither did the General Counsel call any witness to refute it. I observed nothing in the demeanor of the witness which would lead me to discredit him. To the contrary, I was favorably impressed with his forthrightness and his co-operative attitude throughout the hearing.

There are factors, relied on by the General Counsel in his brief, to counter this testimony. The old seniority list, posted in the plant, was not removed, it appears, nor was a new one, conforming to Respondent's revised policy, posted. It is remembered, however, that the old seniority list was not entirely discarded: it was still followed as to the order of reinstating the strikers. The union contract having expired, there was no requirement that the Respondent post its revised list or any list at all. There is also some question as to just when a revised seniority list, dated March 18, 1954, was first prepared, but this does not seem very significant inasmuch as it had little, if any, utility until the beginning of a new season.

Further, it appears that Wright issued no instructions to Florence Hawkins, Respondent's personnel clerk, at a time when, according to Wright, the new seniority policy was instituted, and at the time strikers were reinstated they were not told that their seniority had been reduced. Presumably, the General Counsel would have it inferred from such factors that the reduction in seniority of reinstated strikers, had not actually been determined at the time the strike was concluded and therefore could

not have had as its moving cause the protection and continuance of Respondent's business during the period of the strike. In the face of Wright's positive and uncontested testimony to the contrary, I think such an inference is not justified. With a single exception, there is no showing that strikers on reinstatement inquired concerning seniority status and there is no showing of a deliberate withholding of information; nor was there any advice given them contrary to the position Respondent now asserts. It may well be that Respondent was not impelled to volunteer information which would be adverse to the reinstated striker's interests, until some occasion arose requiring the application of a new policy.<sup>15</sup> Nor does it appear that the situation was such that once the revised seniority policy had been determined, notice of it would necessarily be chan-

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<sup>15</sup>Excerpt from Wright's testimony on cross-examination:

Q. Are you pretty sure that you did not tell any of the returned strikers that they had lost seniority by reason of the fact that some people had continued to work during the strike and they had not?

A. I didn't personally. One of the problems after a strike when you have people come back, you have the problem of trying to rebuild a co-ordination between some people who are out and some people that were in, and it isn't too good business policy to agitate that situation at the time they return. You are interested in business continuing.

Q. Anyway, what it comes down to is this, then: That when some of these people that worked during the strike came to you personally and wanted personal assurance that they would be taken care of after the strike, you gave it to them?

A. That's right.



neled immediately to the personnel clerk. It was Wright's undisputed testimony that his supervisory staff was advised concerning the new policy during the period of the strike and the General Counsel apparently accepted this testimony inasmuch as no evidence was offered to refute it. Assuming, however as apparently the General Counsel would have it found, that no definite formula for a revised seniority policy had been determined until after the strike, such delay would have little significance if, as Wright testified, assurances had been given to nonstrikers, during the strike, concerning the continuity of their employment. It is sufficient that the action, when taken, was consistent with such assurances.

Upon the evidence afforded me, I can only conclude that the General Counsel has not proved unlawful motive in a situation where motive is controlling. I am unable, in fact, to distinguish the situation here from the seniority displacement of economic strikers which the court found lawful in *Potlatch Forests, Inc.*, *supra*. That decision stands squarely for the proposition that an employer may advance the seniority of nonstrikers to the detriment of economic strikers where the action is consistent with, and for the purpose of protecting and continuing his business during the strike. While in the *Potlatch* decision the court refers to those whose seniority was advanced as "replacements," it appears that this term as employed by the court included strikers who returned to their jobs before

the strike was ended. I do not perceive a valid distinction between such employees and employees who, as here, never went on strike. Neither were actually "replacements" as that term was employed in the Mackay Radio case. Nor do I think the fact that in the Potlatch case the employer announced his new seniority policy before the strike was ended, it is a material distinction. In fact, the case at bar is stronger on its facts because in the Potlatch case it appears that the employer had given no assurances to his nonstriking employees that "their places might be permanent," whereas the uncontested evidence here is that such assurances were given.

I do not of course undertake to assess the merits or demerits of the Potlatch decision. It is the law—at least in the Ninth Circuit. The Board did not seek certiorari and in my opinion it has not been overruled in any material respect by the Supreme Court in Radio Officers and related cases, *supra*. If the Board does not intend to follow the court in Potlatch, it is for the Board and not the Trial Examiner to voice its dissent, and until it does so, I consider myself bound by the court's decision.<sup>16</sup> Ac-

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<sup>16</sup>Mathieson Chemical Corporation, et al., 114 NLRB No. 85, cited by the General Counsel, is distinguishable, because in that decision the Board said:

It is highly significant that not until the strike was over, and all the strikers had been put back to work, did the Respondent for the first time decide to separate its employees into two seniority groups for layoff purposes, depending on whether or not they had returned to



cordingly it is found that the Respondent did not violate the Act when, for economic reasons, it gave nonstriking employees and replacements seniority over striking employees.

In certain respects, however, the Respondent went beyond its stated objectives in advancing the seniority of its nonstriking employees and replacements, and in so doing it went outside the purview of the Potlatch and Mackay decisions.

First, with respect to the 12 female employees who went on strike and were thereafter offered reinstatement on a night shift which they refused. The Respondent, taking the position that by the said refusals they quit their employment dropped them from its seniority list altogether. Accordingly, their names do not appear on the March 18, 1954, list. Such action could have had nothing to do with

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work before the end of the strike. The Respondent does not claim and there is no suggestion in the record that, as an economic measure to get employees to work during the strike, it had promised them super-seniority. In fact, it does not appear that the matter of relative seniority was ever mentioned to any employees before the end of the strike.

Other cases, cited by the General Counsel, in which labor organizations have been found to have violated the Act by causing the employer to discriminate with respect to seniority, are inapposite for the simple reason that any action by a labor organization which causes an employer to discriminate is unlawful unless covered by the proviso to Section 8(a)(3) of the Act, and discrimination with respect to seniority is not covered by that proviso.

the successful prosecution of Respondent's business during the strike, and the Respondent does not contend that it did. Such action was discriminatory if in fact the strikers had maintained their status as employees, and they had maintained that status by virtue of Section 2(3) of the Act because they had not been permanently replaced nor had their jobs been abolished. Because of seasonal curtailment or curtailment due to strike, there was not then work for them on the day shift but there is no showing that their day shift jobs had been abolished. As previously found, the action was discriminatory because customarily and normally day shift workers were not required to accept night shift work in order to maintain employee status. Such action resulting in destroying their seniority status altogether, had the necessary effect of discouraging union affiliation, and, being without the justification which made Respondent's revised seniority policy valid in other respects, was unlawful. It is in such a situation that the common law rule that a person is held to intend the foreseeable consequences of his conduct, finds its proper application.<sup>17</sup>

Also excluded from Respondent's March 18, 1954, seniority list, were all striking employees who were not actually reinstated during the 1953-54 season. They, too—with the exception of those who were replaced during the strike, and there is no issue concerning them—had continuing employee status,

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<sup>17</sup>See *Intermountain Equipment Co.*, 114 NLRB No. 214.

not having been replaced and their jobs not having been abolished. Preferential status because of having worked during a prior season was recognized both under the union contract and prior to it. These employees were not, as Respondent chose to regard them, new employees from the start of the 1954-55 season.<sup>18</sup> Their status as employees had not been affected by the fact that for some 8 days they were on strike, and they were therefore entitled to be placed on Respondent's new seniority list, though, as previously found, Respondent could lawfully reduce their seniority below that accorded nonstrikers and replacements. As in the case of the 12 employees whom Respondent regarded as having quit, there was no economic justification for dropping them from the seniority list.

It is true that Respondent in hiring employees for the 1954-55 season, after exhausting its March 18, 1954, priority list, and before hiring persons not previously employed, followed the 1952-53 seniority list, but it is clear that it did so because of pending litigation, as a matter of caution, and not because it considered that the employees in question had acquired and retained preferential status and were entitled to such status as a matter of right. There is of course a difference between a right and a gra-

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<sup>18</sup>Testimony of Florence E. Hawkins, personnel clerk:

Q. Miss Hawkins, were they [strikers not reinstated during the 1953-54 season] returned as new employees? A. Yes, sir.

tuity, and we are here concerned with rights under the Act.

It is found that the Respondent in denying seniority status to those of its employees who went on strike, were not replaced during the strike, and were not thereafter reinstated during the 1953-54 season, including the 12 employees who were offered and refused work on a night shift, discriminated against them with respect to terms and conditions of employment, thereby discouraging union affiliation, in violation of Section 8(a)(3) of the Act. The said action interfered with, restrained and coerced employees in the exercise of rights guaranteed under Section 7 of the Act, and constituted a violation of Section 8(a)(1) of the Act.<sup>19</sup>

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<sup>19</sup>The Respondent in its brief argues that it was not shown that any of the persons whose seniority was affected were in fact strikers or affiliated with the Union. Respondent, however, admitted the allegations of the complaint that on December 1, 1953, the Union called the strike and on December 8 terminated it. This being admittedly a union strike it is immaterial whether the strikers were individually members of the Union, for discrimination practiced against them for engaging in the strike would be violative of the Act regardless of union affiliation, and would have the necessary effect of discouraging union affiliation. As to the identity of persons engaging in the strike, Hawkins testified that substantially all of the strikers upon termination of the strike signed an unconditional request for reinstatement. It is a reasonable inference that all persons signing such a statement of availability, were in fact strikers.



(3) Alleged discriminatory application of  
aptitude tests

Near the start of seasonal operations for the 1954-55 season, but not at the start, persons available for employment, both old and new employees, were given aptitude tests. Aptitude tests had not previously been used in Respondent's operations. These tests were administered by the California Bureau of Employment, and applicants for employment who failed to pass the tests, were not hired. There is no allegation in the complaint that these tests were discriminatorily applied against striking employees, but that was the position of the General Counsel at the hearing, and testimony in the matter was taken without objection. I shall therefore consider it though it would seem that a matter of such potential gravity would more properly appear as a part of the pleadings in the case.

The General Counsel's position rests on the contention that none of the employees whose names appeared on Respondent's March 18, 1954, seniority list were required to take the tests as a condition of being employed for the 1954-55 season, whereas all applicants for employment not on the March 18 list were required to take and pass the tests before being employed. It has been seen that the March 18 list contained the names only of persons who worked during the December, 1953, strike or were reinstated during the 1953-54 season, and it has been found that the Respondent was in violation of the Act when it deprived strikers who had not been re-

placed and who were not reinstated during the 1953-54 season, of seniority status.

In support of his position, the General Counsel examined but one witness. That witness was Respondent's personnel clerk, Florence E. Hawkins, acknowledged by the General Counsel to be a reliable witness.

Concerning the use of aptitude tests, Hawkins testified: " \* \* \* it was purely experimental as far as the date industry was concerned. They had never tried it. These tests had been tried in various other lines of fruit, and \* \* \* proved very beneficial, consequently, they weren't too sure as to what the results would be in our industry, but they wanted to try, and he [Proser, an employee of the State of California assigned to the Employment Office in Indio], plus Mr. Bonham (?) and all connected with the deal felt that they could do us a lot of good."

This is the sole evidence as to how the aptitude tests came to be given to Respondent's employees. I see nothing implausible about it.

Admittedly, no employee whose name appeared on the March 18 list was required to take the test before going to work. Admittedly, a substantial number of them were required to take the test after going to work. It was Hawkins' further undisputed testimony that not all persons hired whose names did not appear on the March 18 list, were required to take the test before going to work, though they



were later required to take the test. It would appear, however, that a majority of those whose names did not appear on the March 18 list were required to pass the test before going to work.

Concerning these matters Hawkins testified: “\* \* \* we wanted everyone to take it [the aptitude test], but it just so happened that they couldn’t get setup down in time for it to be given to those people [referring to the March 18 list]. We called them in to work sooner than they were able to get the setup made. That is the reason they were hired without it.” Continuing with Hawkins’ examination by the General Counsel:

Q. But, at least, as far as 1954—the fall of 1954, the only people who were given these aptitude tests were those whom you regarded as new applicants?

A. No, that is not so, because, as I say, the only reason all of them weren’t given the test was because they didn’t have things available to give them that rapidly, but we had some people of this list that it was possible to give it to them. He had the time to give it to them, and it was possible that we could have them take it.<sup>20</sup>

We had some on the list that had taken it, but not the complete list, you know, because we didn’t have the time, and wherever possible, I tried to see

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<sup>20</sup> Respondent’s records corroborate Hawkins’ testimony that a substantial number on the March 18 list, though by no means a majority of them, took the aptitude tests.

that they had the test, whether they were on the list or whether they were new ones.

Continuing further with General Counsel's examination of Hawkins:

Q. Now, with regard to people who went to work, and whose name was not on the March 18th list, were all of those required to take the aptitude test?

A. No, because there again they were not setup to handle them in the volume in which I was required to bring them in, consequently, it was necessary for me to hire people who had not had the aptitude test because they could not process them over there rapidly enough for us for our needs.

From the foregoing it is clear, if Hawkins is believed, that the sole reason why employees on the March 18 list were not given aptitude tests before being offered employment, is that at the time Respondent began hiring for its 1954-55 season, the State office was not as yet equipped to administer the tests, and for the same reason employees not on the March 18 list but the first to be hired among those whose names were not on the March 18 list, also were not given the tests before going to work. I can see no reason not to credit Hawkins who was the only witness to testify in the matter and whose testimony in all other respects has been given credence and has been relied on by the General Counsel. If this testimony is credited, and it is, there was no discrimination with respect to the aptitude tests

were administered, as between persons whose names appeared on the March 18 list and those hired later, that is not explained by the inability of the State office to process the tests in the order of hirings. It is also borne in mind that all strikers who were reinstated during the 1953-54 season appeared on the March 18 list. In common with all others on that list, they were not required to take the aptitude tests before going to work and if later required to take the tests, they suffered no loss of employment as a consequence thereof.

Finally, it appears that the General Counsel would have inferences of discrimination drawn from the fact that no one on the March 18 list was denied employment because of the aptitude tests whereas a number of those names were not on the March 18 list were denied employment on the grounds that they had failed the test. But it does not affirmatively appear that anyone on the March 18 list who took the test failed it. The General Counsel at the hearing stated that this was immaterial but I should think it would be material if failing the test they were nevertheless retained whereas employment was refused to those not on the list who failed the test. We must assume, however, that no one on the March 18 list failed to pass the aptitude test because there is no evidence that they did. Some of those not on the March 18 list did fail the test and were denied employment. We were asked to draw the inference of discrimination from these naked facts alone. But absent any evidence whatever

of the competence of those failing the tests other than the fact of acquired seniority, or evidence that the tests were more exactly applied in the one situation than in the other, or of collusion between the Respondent and the State office which applied the tests—for, if General Counsel is right it would amount to that—such an inference would in fact be not an inference but pure speculation.

It seems clear, and is found, that the General Counsel's position that the aptitude tests were used by Respondent to rid itself of unwanted strikers, for the reason that they went on strike, is without substantial support in the record.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent, set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

It having been found that the Respondent engaged in unfair labor practices by refusing on and after November 10, 1954, to bargain with the Union though the Union had been properly certified as representative of its employees in an appropriate



unit, it will be recommended that on request the Respondent bargain with the Union.

It having been found that the Respondent discriminated against certain of its striking employees by depriving them of seniority status, it will be recommended that as to such of those who had acquired seniority status prior to the strike as shown by the inclusion of their names on the 1952-53 seniority list, and as to such of these as requested reinstatement upon conclusion of the strike, as shown by affixing their names to an availability list on or about December 8 or otherwise identifying themselves to Respondent as desiring reinstatement, the Respondent restore to such of them as have not since quit their employment or been discharged for cause,<sup>21</sup> the seniority status that would have been accorded them had they been reinstated during the 1953-54 season, by inclusion of their names on the Respondent March 18, 1954, seniority list.

The General Counsel seeks a back-pay order, but I can find no basis in the evidence for such an order and therefore none will be recommended. It is true, as the General Counsel argues, that the computation of back pay may be left to compliance, but I consider it essential as a basis for a back-pay order even in general terms, that it be shown that losses were incurred as a result of the unfair labor prac-

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<sup>21</sup>This qualification I deem necessary in view of the extraordinary (?) lapse of time between the occurrence of the unfair labor practices and the hearing herein.



tices. I do not find in the evidence here the slightest basis for an inference that money losses were incurred.

I do not find in the circumstances of this case a potential threat of future violations, or an underlying purpose generally to thwart and discourage organizational activities, and therefore I shall not recommend a broad cease and desist order.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

#### Conclusions of Law

1. United Packinghouse Workers of America, AFL-CIO, Local Union No. 78, is a labor organization within the meaning of Section 2(5) of the Act.

2. Since October 21, 1954, the said labor organization has been and now is the exclusive representative of all Respondent's employees in the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All packing shed employees employed by the Respondent at its Indio, California, packing shed, excluding all office and clerical employees, and also excluding watchmen, guards, supervisors and professional employees as defined in the Act.

3. By refusing on and after November 10, 1954, to bargain collectively with the aforesaid labor organization as exclusive representative in the above

appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By discriminating in regard to the hire, conditions, and tenure of employment of its employees whose names appeared on the 1952-53 seniority list, who participated in the December 1-8, 1953, strike and thereafter unconditionally applied for reinstatement but were not reinstated during the 1953-54 season, thereby discouraging membership in the aforesaid labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondent has not engaged in unfair labor practices by according its nonstriking employees and replacements during the period of the December 1-8, 1953, strike, super-seniority over its employees who participated in the strike.

8. The Respondent has not engaged in unfair labor practices by instituting and discriminatorily applying a system of aptitude tests.

## Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, it is recommended that California Date Growers Association, Indio, California, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in or activities on behalf of United Packinghouse Workers of America, AFL-CIO, Local Union No. 78, or any other labor organization, by discriminatorily depriving employees of seniority status, or by any like or related manner discriminating in regard to hire and tenure of employment or any terms or conditions of employment;

(b) Refusing to bargain collectively with the above-named labor organization as the exclusive representative of all employees in the unit above found to be appropriate, with respect to rates of pay, wages, hours of work, and other conditions of employment;

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form and join labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities except to the

extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which it is found is required to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of employees in the unit described above, with respect to their rates of pay, wages, hours of work, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Rescind forthwith its discriminatory seniority policy as represented by its March 18, 1954, seniority list, to the extent that that list omitted the names of striking employees who had acquired seniority status prior to the strike, were not replaced during the strike, and applied for reinstatement at the conclusion of the strike but were not reinstated during the 1953-54 season;

(c) Restore to all employees with seniority status as shown by the inclusion of their names on the 1952-53 seniority lists, who participated in the December 1-8, 1953, strike; who upon the conclusion of the strike requested reinstatement as shown by affixing their names to an availability list on or about December 8, 1953, or otherwise identifying themselves to Respondent as applicants for rein-



statement; who were not reinstated in the 1953-54 season and who have not since quit or been discharged for cause: to the seniority status that would have been accorded them had they been reinstated during the 1953-54 season in the same manner in which striking employees who were reinstated during that season, were accorded continuing seniority status;

(d) Post at its place of business in Indio, California, copies of the notice attached hereto as Appendix. Copies of the notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twenty-first Region, in writing, within twenty (20) days from the date of the service of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply therewith.

It is further recommended that, unless within twenty (20) days from the date of the service of this Intermediate Report and Recommended Order the Respondent notifies said Regional Director that it will comply with the foregoing recommendations,



the Board issue an order requiring the Respondent to take the aforesaid action.

Dated this 20th day of February, 1956.

/s/ WILLIAM E. SPENCER,  
Trial Examiner.

## Appendix

### Notice to All Employees Pursuant to

#### The Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in United Packinghouse Workers of America, AFL-CIO, Local Union No. 78, or in any other labor organization, by discriminating with respect to seniority or any term or condition of employment.

We Will Not interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership

in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

We Will bargain collectively, upon request, with the above-named labor organization, as the exclusive representative of employees in the appropriate unit, with respect to grievances, labor disputes, wages, rates of pay, hours of employment and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The appropriate unit is:

All packing shed employees employed at the Indio, California packing shed, excluding all office and clerical employees, and also excluding watchmen, guards, supervisors and professional employees as defined in the National Labor Relations Act.

We Will restore to the seniority status that would have been accorded them had they been reinstated upon conclusion of the December 1-8, 1953, strike, all employees with previously acquired seniority status who participated in that strike, who were not replaced during the strike, who applied for reinstatement at the conclusion of the strike but were not reinstated during the 1953-54 season, and who have not since quit or been discharged for cause, and will add their names to the March 18, 1954, seniority list, in the order in which they appeared on the 1953 seniority list.

We Will rescind our policy of depriving the aforesaid employees of seniority status.

All our employees are free to become or remain members of the above-named or any other labor organization. We will not discriminate in regard to hire or tenure of employment against any employees because of membership in or activity on behalf of any such labor organization.

CALIFORNIA DATE  
GROWERS ASSOCIATION,  
Employer.

Dated .....

By .....,  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Issued June 21, 1957.

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[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT  
AND RECOMMENDED ORDER

Comes now the California Date Growers Association, Respondent-Employer in the above-captioned case, and files its exceptions to the Intermediate Report and Recommended Order as follows:

1. Respondent Employer excepts to the Findings of Fact with regard to the issue of refusal to bar-

gain contained in said Intermediate Report. (Intermediate Report, p. 5, line 12, to p. 8, line 51.)

2. Respondent Employer excepts to the Findings of Fact with respect to the issue of those employees who the Trial Examiner finds "went on strike, were not replaced during the strike, and were not thereafter reinstated during the 1953-54 season, including the 12 employees who were offered and refused work on a night shift." (Intermediate Report, p. 14, line 4, to p. 15, line 15.)

3. Respondent Employer excepts to paragraphs 2, 3, 4, 5 and 6 of the Conclusions of Law in said Intermediate Report. (Intermediate Report, p. 18, line 50 through p. 19, line 31.)

4. Respondent Employer excepts to the Recommendations in said Intermediate Report. (Intermediate Report, p. 19, line 42, through p. 21, line 5.)

5. Respondent Employer excepts to the "Notice to All Employees" appearing in the Appendix to said Intermediate Report.

6. Respondent Employer excepts to the following rulings upon motions and objections made at the hearing by the Trial Examiner:

(a) The admission in evidence of General Counsel's Exhibit 3 (Reporter's Transcript of Hearing, p. 44, line 17, to p. 46).

(b) The admission in evidence of General Counsel's Exhibit 7a to 7c, inclusive (R. T. p. 90-93).

(c) The denial of Respondent's Motion to Dismiss (R. T. p. 127, line 15, to end of p. 188).

(d) The exclusion of evidence offered by the Respondent (R. T. p. 237-239).

These exceptions are based upon the Brief in support thereof submitted herewith, the Transcript of the Hearing before the Trial Examiner, and the pleadings, papers and files in this case.

Dated: March 23, 1956.

Respectfully submitted,

BEST, BEST & KRIEGER,

By /s/ JOHN D. BABBAGE,

Attorneys for Respondent.

Received March 26, 1956.

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[Title of Board and Cause.]

### STATEMENT OF EXECPTIONS

General Counsel hereby excepts to the Intermediate Report and Recommendations of the Trial Examiner herein as follows:

Page 10, lines 13-22.\*

1. To the finding that "Motive controls here \* \* \* and the employer has the right to take such other action as he deems necessary to protect and

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\*[Refers to Page and Lines on original.]



continue his business in the face of an economic strike, providing his motive is, in fact, to protect and continue his business, and not to retaliate against and punish his striking employees.”

Page 10, lines 39-46.

2. To the finding that “With respect to its action in reducing the seniority of reinstated strikers, we have the undisputed testimony of its general manager, James F. Wright, that this action was taken for the purpose of reassuring its non-striking employees and replacements concerning the continuity of their employment, and because it considered such action essential to safeguard and protect its economic interests in continuing to operate during the strike.”

Page 12, lines 28-34.

3. To the refusal to find that the reduction in seniority of reinstated strikers had not actually been determined at the time the strike was concluded and therefore could not have had as its moving cause the protection and continuance of Respondent’s business during the period of the strike, but must have been designed to punish strikers for striking.

Page 13, lines 6-11.

4. To the Trial Examiner’s finding that even if no definite formula for a revised seniority policy had been determined until after the strike, such

delay would have little significance if, as Wright testified, assurances had been given to nonstrikers, during the strike, concerning the continuity of their employment.

Page 13, lines 13-15.

5. To the finding that the General Counsel has not proved unlawful motive in a situation where motive is controlling.

Page 13, lines 13-33.

6. To the Trial Examiner's failure to distinguish the Circuit Court decision in the Potlatch<sup>1</sup> case.

Page 13, lines 35-42.

7. To the Trial Examiner's finding that he is bound to follow the decision of the Circuit Court in the Potlatch case.

Page 13, lines 59-62, Page 14, lines 54-56.

8. To the Trial Examiner's finding that cases cited by the General Counsel are inapposite because of express limitations stated in Section 8 (b) (2) and the proviso of Section 8 (a) (3) of the Act.

Page 13, line 42 to page 14, lines 1-2.

9. To the finding that the Respondent did not violate the Act when, for economic reasons, it gave

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<sup>1</sup>N.L.R.B. vs. Potlatch Forests, Inc., 189 F. 2d 82 (C.A. 9).

nonstriking employees and replacements seniority over striking employees.

Page 14, lines 43-44.

10. To the finding that Respondent could lawfully reduce the seniority of strikers below that accorded nonstrikers and replacements.

Page 15, lines 17-45; Page 16, lines 1-62; Page 17, lines 1-50.

11. To the Trial Examiner's conjectures about the General Counsel's position and his comments based on these conjectures.

Page 15, lines 17-45; Page 16, lines 1-62; Page 17, lines 1-50; Page 16, lines 13-14.

12. To the Trial Examiner's failure to limit his finding relative to aptitude tests to the undisputed fact that: No employee whose name appeared on the March 18 list was required to take the test before going to work. Ergo, no employee discriminatorily deprived of seniority should be required to take the test before going to work.

Page 18, lines 20-30.

13. To the finding that striking employees should receive only partial restoration of their pre-strike seniority.

Page 18, lines 57-59, Page 18, lines 26-28.

14. To the finding that "in view of the extraordinary (?) lapse of time between the occur-

rence of the unfair labor practices and the hearing herein" there should be no restoration of seniority to strikers who have "since quit or been discharged for cause."

Page 18, lines 32-39.

15. To the finding that no back pay should be ordered.

Page 19, lines 33-36.

16. To the conclusion that Respondent has not engaged in unfair labor practices by according its nonstriking employees and replacements during the period of the December 1-8, 1953, strike, super-seniority over its employees who participated in the strike.

Page 19, lines 38-39.

17. To the true conclusion that "Respondent has not engaged in unfair labor practices by instituting and discriminatorily applying a system of aptitude tests." This matter was not in issue.

Page 20, lines 21-38.

18. To the recommendation that striking employees receive only partial restoration of their pre-strike seniority.

Page 20, lines 41-42 (Notice ii).

19. To the failure of the proposed notice to provide for full restoration of seniority to all strikers who enjoyed pre-strike seniority.

Page 20, lines 41-42.

20. To the failure to find that striking employees were reduced in seniority or deprived of seniority to punish them for striking.

21. To the failure to find that assurances to non-strikers are not the same as a strike seniority policy.

22. To the failure to recommend an appropriate remedy, restoring to all strikers the benefits which they would have received if their seniority had not been reduced or removed, including back pay where their employment was limited or denied by the new seniority policy.

23. To the failure to recommend an adequate notice.

Respectfully submitted,

/s/ GEORGE H. O'BRIEN,  
Counsel for the General Counsel, National Labor  
Relations Board.

Dated at Los Angeles, California, this 23rd day  
of March, 1956.

Received March 26, 1956.



[Title of Board and Cause.]

PETITION FOR RECONSIDERATION OF  
BOARD'S DECISION AND ORDER DATED  
JUNE 21, 1957

Respondent, the California Date Growers Association, files this petition for reconsideration of the Board's Decision and Order of June 21, 1957, and respectfully requests reconsideration on the following grounds:

I.

Respondent objects to the conclusion of the Board supporting the Regional Director's findings with respect to the status of the ballots of the 12 employees who refused jobs on the night shift in January, 1954. The Respondent's position is that the actions of these employees in refusing night work after the strike was different from the ordinary situation wherein an employee on a day shift declined night shift work.

The record discloses the following facts:

1. Eight of these employees had never refused night shift work before.
2. All of these employees were strikers.
3. All of them had signed the availability sheets after the strike.
4. Eight of these employees had previously worked night shifts or had stated on their applications that they would accept night work.

5. Five of these employees did not apply for employment at any time during the following season (1954), although all of them were notified of the availability of work during the next season.

These employees were:

Anna Gagnon

Lillian Fieber

Virginia Luna

Celia Vasquez

Florence Flores

6. Only four of the twelve employees testified at the hearing on challenges.

7. Among the remaining eight employees who did not testify were the five who did not apply for employment during the following season.

The Board's decision fails to recognize that Respondent is engaged in a seasonal industry. New applications for employment are received every season. Each year the employees are in fact "new employees." It is for this reason that the Respondent uses "priority lists" and "hiring lists" rather than a "seniority list." The pattern of employment is vastly different from a year round activity wherein an employee's day-to-day job status is based on seniority. Furthermore, the Respondent has no way of knowing whether any or all of the employees from the previous season will re-apply during the following season. The available labor source is limited in the area. An employee who quits during one season can readily expect to be re-employed during the next season because the em-

ployee knows that labor is in short supply. The "priority" and "hiring" lists are an effort on the part of respondent to give some recognition to those employees who do reapply for work in successive seasons, but the employees from the previous season are not automatically on the payroll the following season. The Respondent determined in the early years of its operation that so many gaps occurred by reason of the failure of many employees to return during successive seasons that it could not operate with a fixed "seniority list" of employees from year to year. Thus, Mr. Wright's statement (Hearing on Challenges April 29, 1954, p. 39) that an employee lost his position on the priority list if the employee refused night work, meant that the employee was treated the same as if the employee had quit. Only those employees discharged for cause (and even under those circumstances there have been exceptions) are not likely to be re-employed in a succeeding season.

The point made by Mr. Wright's testimony is that the twelve employees who did not accept night work were relinquishing any further opportunity of employment during that season. These employees should have known that, and they should not have been entitled to vote under the terms of the consent election agreement.

The crucial test, however, is whether or not any of these employees intended to quit by not accepting the night work offered to them. The only way this can be determined would be on the basis of

some sort of showing that these employees had or had not intended to quit. We are dealing with the question of what was in the minds of these employees. Did they intend to merely reject the shift offered, or did they intend to look elsewhere for employment and quit their job at Respondent's plant? People's motives apparently play an important part in the Board's decisions. It is noted that certain motives are ascribed to Respondent and are considered as controlling by the Board in determining whether an unfair labor practice was committed by Respondent (pp. 3 and 4 in Board's Decision). The Board's conclusions with respect to Mr. Wright's motives, whether in fact right or wrong, are at least based on his voluntary testimony.

With respect to the motives of these twelve employees, however, the Board has adopted the assumption that the eight employees who did not testify did not intend to quit. It is understandable that it could have been concluded from the testimony of the four who did testify that these four did not intend to quit even though their testimony on this issue is not clear. But to assume that the remaining eight had the same intentions or would so testify, is, we earnestly believe, completely unfounded. In other words, there was no evidence whatsoever as to whether these remaining eight employees intended to quite or merely intended to refuse work on a particular shift. Furthermore, among the remaining eight employees who did not testify, five of these employees did not apply for employment at any time during the following season

(1954) although all of them were notified in the usual course of business of the availability of work. These five employees were:

Anna Gagnon

Lillian Fieber

Virginia Luna

Florence Flores

Celia Vasquez

The failure of these employees to apply for work during the next season makes even more important the need for testimony with respect to their intention at the time of their refusal to accept night work. These circumstances also make more certain the Respondent's position that they in fact quit their employment.

The Board's decision turns on the point that it was Respondent's prior practice to permit daytime employees to decline night shift work without loss of their status as employees. We urge that this practice is not relevant to the issue in this case. The Respondent's prior practice would be important in a discriminatory discharge case or in a constructive discharge case. Thus, if the employer was attempting to sustain a right to discharge these employees, it would be material and relevant to consider whether the employer had discharged employees under similar circumstances before. But this is not such a case. The Respondent does not claim to have discharged these employees. Its contention from the very inception of this case has been that these employees quit. Respondent introduced evidence



that each of these employees had quit. (P. 59 Hearing on Challenges, April 29, 1954.) As to four of the employees, the evidence was, to some extent at least, contradicted by the testimony of the four employees who testified. But what about the other eight? Assuming they were unavailable or unwilling to testify, not even an informal statement or hearsay evidence was sought to be introduced indicating their intention.

It is this complete absence of contradictory evidence with respect to the employees who did not testify, and particularly the five who did not apply during the next season, that is the basis of Respondent's contention that the Regional Director's Decision was arbitrary and capricious. A decision of the Regional Director is arbitrary and and capricious if it is based on no evidence of a probative character. That is certainly the case with respect to the eight employees who did not testify. The Board's Decision says in effect that it is inferred that these employees did not quit because in the past when an employee working days declined night work the employee was not discharged. Such an inference does not follow. Whether an employee quit is determined by the actions, attitude or state of mind of the employee. Whether an employee was "not discharged" is determined by the actions, attitude or state of mind of the employer.

We respectfully urge that the Board has mistakenly adopted the reasoning that an "inference" exists that these eight employees did not intend to

quit. Such an inference under the circumstances of this case is contrary to existing law. There is a legal presumption that a person intends the ordinary consequences of his voluntary act. The ordinary consequences of a person's refusal to accept employment is that the employee does not want the job, and if he has previously been employed by the party offering the employment, that the employee has quit. Some evidence must be introduced to overcome this presumption. The testimony of the four employees who testified can perhaps be considered as sufficient to overcome the presumption as to these four. As to the eight who did not testify, the presumption has not been overcome. In the absence of such evidence with respect to the eight employees, the presumption continues to exist and has the mandatory effect of establishing that the employees in fact quit.

We strongly urge that the Decision permitting the counting of these challenged votes should not be approved merely because the union or the Hearing Officer for the Board failed to produce certain witnesses or failed to produce any evidence of what their testimony would be. It is improper to infer what absent witnesses might say. The Regional Director's Decision, based on inferences, unsupported by evidence, is arbitrary and capricious.

## II.

Respondent respectfully requests the Board to reconsider the statement in its Opinion which reads as follows:

“The Respondent’s entirely unjustified refusal to bargain and its conduct in discriminating against the above employees, supported neither by economic nor other valid reasons, persuade us that it was motivated by a desire to avoid all bargaining with the Union and to punish those employees who had not returned to work during or since the strike.”

This statement seeks to condemn Respondent’s general manager for lawfully asserting his company’s rights within the scope of the Rules and Regulations of the Board and the provisions of the National Labor Relations Act as Amended. Respondent has, of course, no control over what the subjective feelings of the Board may be with respect to any particular case. Respondent should, however, be able to act within the Rules and Regulations of the Board and applicable Statutes without fear of being abused in a published decision of the Board condemning him because he acted within his rights.

### III.

In view of the Board’s consistent position with respect to the Potlatch case, Respondent here states its exception to this portion of the Board’s decision without argument. It is apparent that the Board disagrees with the Potlatch case, so any further attempt by Respondent to convince the Board of the applicability of the Rules of the Potlatch case to the instant case would be without avail. Respondent urges, however, that the Mathie-

son case is not applicable to the facts of the instant case.

Wherefore:

Respondent respectfully prays that the Board reconsider its Decision and Order of June 21, 1957, and

I. Set aside the election of February 18, 1954, and order a new election at an appropriate time.

II. Dismiss the unfair labor practice charges filed December 14, 1953.

Respectfully requested,

BEST, BEST & KRIEGER,

By /s/ JOHN D. BABBAGE,

Attorneys for California Date  
Growers Association.

Dated: August 6, 1957.

Received Aug. 8, 1957.

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[Title of Board and Cause.]

### ORDER DENYING PETITION

On June 21, 1957, the Board issued a Decision and Order in the above-entitled proceeding. Thereafter, on August 8, 1957, counsel for the Respondent filed a Petition for Reconsideration of the said Decision and Order. The Board having duly considered the matter,

It Is Hereby Ordered that the said petition be, and it hereby is, denied on the ground that nothing has been presented that was not previously considered by the Board.

Dated, Washington, D. C., September 3, 1957.

By direction of the Board.

FRANK M. KLEILER,  
Executive Secretary.

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Before the National Labor Relations Board  
Twenty-first Region  
Case No. 21-CA-2130

In the Matter of:

CALIFORNIA DATE GROWERS ASSOCIA-  
TION,

and

UNITED PACKINGHOUSE WORKERS OF  
AMERICA, AFL-CIO, LOCAL UNION  
No. 78.

Monday, January 9, 1956

Before: William E. Spencer, Trail Examiner.

Appearances:

GEORGE H. O'BRIEN,

Appearing on Behalf of the General Coun-  
sel of the National Labor Relations  
Board.



BEST, BEST & KRIEGER, By  
JOHN D. BABBAGE,

Appearing on Behalf of California Date  
Growers Association, the Respondent.

JOHN JANOSCO,

Appearing on Behalf of the United Pack-  
inghouse Workers of America, CIO,  
Local Union No. 78.

\* \* \*

## PROCEEDINGS

\* \* \*

Mr. O'Brien: Mr. Examiner, I shall ask the reporter to mark as General Counsel's Exhibit 2 the record in the representation case docketed as case No. 21-RM-280, described in the complaint, and the certification which forms the basis for the allegation of the complaint that there has been a refusal to bargain, that is, the obligation to bargain is based upon the documents which I have assembled as General Counsel's Exhibit 2. By statute, of course, they become part of the unfair labor practice case.

For the convenience of all parties here, I have assigned letters to the various documents and put in the front of it a table of contents where I have identified these documents beginning with the petitioner General Counsel's Exhibit 2-A filed December 9, 1953, and ending with a copy of a letter [8\*] from Mr. Babbage dated October 29, 1954, identified as General Counsel's Exhibit 2-MMM.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

I am offering General Counsel's Exhibit 2 in bulk. [9]

\* \* \*

Trial Examiner: Do you have an objection, Mr. Babbage, to receiving it?

Mr. Babbage: No objection.

Trial Examiner: General Counsel's Exhibit No. 2 is received in evidence.

(Thereupon, the documents above-referred to were marked General Counsel's Exhibit No. 2-A through 2-MMM and were received in evidence.)

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## GENERAL COUNSEL'S EXHIBIT No. 2-A

United States of America  
National Labor Relations Board

### PETITION

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with Section 9 (f), (g) and (h) of the National Labor Relations Act.

Case No.: 21-RM-280.

Date Filed: 12-9-53.

Compliance Status Checked By: /s/ DB.

Instructions—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

Attachments Required—Except when this Petition is filed by an employer under Section 9 (c) (1) (B) of the act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition.

\* \* \*

B. ☒ RM—Representation (Employer)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in Section 9 (a) of the act.

\* \* \*

2. Name of Employer:

California Date Growers Association.

Employer Representative to Contact:

J. D. Babbage.

Phone No.:

Riverside 598.

3. Address of Establishment Involved:

Corner Highway 99 and King Street, Indio.

4a. Type of Establishment:

Date packing shed.

4b. Identify Principal Product or Service:

Processing and packing dates.

5. Description of Unit Involved:

Included—all packing shed employees, including floor ladies employed at the company's Indio, California, packing shed.

Excluded—office and clerical employees, truckdrivers, guards and watchmen and supervisory employees as defined by the National Labor Relations Act as amended.

\* \* \*

8. Recognized or Certified Bargaining Agent:

United Fresh Fruit & Vegetable Workers Local Ind., Union No. 78.

Address:

1010 So. Broadway, Los Angeles 15, California.

Affiliation:

CIO.

Date of Recognition or Certification:

12-27-51.

\* \* \*

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

CALIFORNIA DATE  
GROWERS ASSN.,

By /s/ J. D. BABBAGE,  
Attorney.

Address: Evans Bldg., Riverside, Calif.  
Telephone number: 598.

Wilfully False Statement on This Petition Can  
Be Punished by Fine and Imprisonment (U. S.  
Code, Title 18, Section 1001).

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-B

Best, Best & Krieger  
Attorneys at Law  
Evans Building  
Riverside, California

December 10th, 1953.

National Labor Relations Board,  
111 West Seventh Street,  
Los Angeles, California.

Re: California Date Growers Association, Em-  
ployer. United Fresh Fruit and Vegetable  
Workers, Local Industrial Union 78 CIO.



Gentlemen:

I enclose herewith a copy of a telegram received from the above-captioned Union, wherein this organization presented a claim to the employer to be recognized as a representative of the employees of the employer as defined in Section 9 (a) of the Act.

A copy of this telegram is being forwarded to you pursuant to your rule requesting evidence in support of the petition of representation filed by the employer in the above-captioned matter on December 9th, 1953.

Yours very truly,

/s/ J. D. BABBAGE.

JDB:ms

Encl.

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL's EXHIBIT No. 2-C

Western Union

[Telegram]

December 8, 1953.

California Date Growers Association,  
Indio, California.

LIU 78 CIO Calls Off Strike at the California Date Growers Association and Valley Date Gardens. The Members Will Return to Work Immediately. Re-

quest We meet December 9th at 10:30 A.M. to Negotiate Issues in Question.

C. F. MOORHEAD,

Vice President, LIU 78 CIO.

Indio, California.

MSD

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-K

United States of America  
National Labor Relations Board

Agreement for Consent Election

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby waive a hearing and Agree as Follows:

1. Election—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election

shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election, and provided further that rulings or determinations by the Regional Director in respect of any amendment of any certification resulting therefrom shall also be final.

2. Eligible Voters—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military service of the United States who appear in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and any employees on strike who are not entitled to reinstatement. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. Notices of Election—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of

the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. Observers—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. Tally of Ballots—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties. When appropriate, the Regional Director shall issue to the parties a certification of representatives or certificate of results of election, as may be indicated.

6. Objections, Challenges, Reports Thereon—Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties at the time of filing with the Regional Director. The Regional Director shall investigate

the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If the challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon. The method of investigation of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding.

7. Run-off Procedure—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall proceed in accordance with the Board's Rules and Regulations.

8. Commerce—The Employer is engaged in commerce within the meaning of Section 2(6)(7) of the National Labor Relations Act.

Copy

9. Wording on the Ballot—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory



to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First.

Second.

Third.

Fourth.

10. Payroll Period for Eligibility—

The last complete payroll period in January, 1954.

11. Date, Hours, and Place of Election—

Date: Thursday, February 18, 1954.

Hours: Between the hours of 1:15 p.m. and 2:15 p.m.

Place: At the Employer's packing shed in Indio, California.

12. The Appropriate Collective Bargaining Unit—

Including all packing shed employees employed by the Employer at its Indio, California, packing shed;

Excluding all office and clerical employees, and also excluding watchmen, guards, supervisors, and professional employees as defined in the National Labor Relations Act, as amended.

Those eligible to vote shall be all persons who were employed in the bargaining unit set forth above during the last complete payroll period

in January, 1954, and including all persons whose names appear on the 1953 seniority list; but excluding any such persons who have been permanently replaced and those employees who have quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election.

If Notice of Representation Hearing has been issued in this case, the approval of this agreement by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

UNITED FRESH FRUIT & VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
No. 78, CIO.

(Petitioner);

By /s/ C. F. MOORHEAD,  
Vice President.

CALIFORNIA DATE GROW-  
ERS ASSOCIATION,  
(Employer);

By /s/ J. D. BABBAGE,  
Attorney.

Recommended:

/s/ IRVING HELBLING,  
Field Examiner, National  
Labor Relations Board.

Date approved: February 5, 1954.

/s/ GEO. A. YAGER,

HOWARD F. LeBARON,

Regional Director, National  
Labor Relations Board.

Case No. 21-RM-280.

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-P

United States of America  
National Labor Relations Board

Case No. 21-RM-280

In the Matter of:

CALIFORNIA DATE GROWERS ASSOCIA-  
TION,

(Employer and Petitioner).

and

UNITED FRESH FRUIT & VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
No. 78, CIO,

(Union).

Date issued: February 18, 1954.

Type of election: Consent.

TALLY OF BALLOTS

The undersigned agent of the Regional Director  
certifies that the results of the tabulation of ballots

cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters: . . . . 182
2. Void ballots . . . . . 0
3. Votes cast for United Fresh Fruit & Vegetable Workers Local Industrial Union No. 78, CIO . . . . . 69
4. Votes cast for . . . . .
5. Votes cast for . . . . .
6. Votes cast against participating labor organization(s) . . . . . 70
7. Valid votes counted (sum of 3, 4, 5, and 6). 139
8. Challenged ballots . . . . . 65
9. Valid votes counted plus challenged ballots (sum of 7 and 8) . . . . . 204
10. Challenges are (not) sufficient in number to affect the results of the election
11. A majority of the valid votes counted plus challenged ballots has (not) been cast for: United Fresh Fruit & Vegetable Workers Local Industrial Union No. 78, CIO.

For the Regional Director,

/s/ GEO. A. YAGER.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For United Fresh Fruit & Vegetable Workers  
Local Industrial Union No. 78, CIO,

/s/ HECTOR HINOJOSA.

For California Date Growers Association,

/s/ J. D. BABBAGE.

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-T

Florence Hawkins,  
Box 1626, Indio,  
44-835 King St.  
No Phone.

I, Florence Hawkins, after being sworn hereby say I have been employed by the Company about 11½ years. I am a distribution clerk. As such I handle payroll problems and other office functions. Around the middle of August or the first of September, I started to handle applications for employment. I also keep Social Security Records and call the employees for work. I call the employees for the 1953 season. Before the start of the season I sent a form letter, identical to the one attached, to every person on the seniority. I also sent the same letter to all persons who didn't have established seniority but who worked the previous season for less than 12 weeks. By the time we finished getting all the people we needed the seniority list had been



exhausted. We had to hire about 75 persons without established seniority who worked last year and about 50 persons who had no previous employment at the company.

About the first week in November the company started a night shift. About that time Mr. Yowell told me we were going to start a night shift and we would need about 15 employees.

Fay Gillespie, the head of the Packing Department, told me that two girls wanted to transfer to night work and that she would transfer them.

In securing help for the night shift I first went to the applications for employment and called all those who had said they wanted night shift work. I left those applications separated from the applications which showed the employee didn't want night shift work. The employees who were hired for night shift either were not on the seniority list or had never worked for the company in the past.

Around January 16 Mr. Yowell told me we were to put on a night shift. He told me we would need 17 employees. He brought me a seniority list and told me to call the employees in the order in which they were listed. I did so. I had no conversation with him about the status of the persons on the list and merely followed the direction he had given me.

When I called the employees I asked them if they wanted to return to work. I told them we were putting on a night shift and asked if they wanted to work on it. The employees gave me their reasons

for refusing to take the night shift. Others accepted the work. Several employees said they could only work days. The reasons the employees gave for refusing night were all personal reason having to do with child care, transportation or other similar problems. About two employees asked me if we had any day work. I told them we had a full crew and didn't need any day workers. Ellen Chester was one, Catherine White was the other. I don't remember any employee saying they had more seniority than day workers who were employed. I am quite sure I had no conversation about seniority with any of the employees.

At no time did I check the names of the persons who refused night work with their applications to determine what they said in regard to accepting night work.

/s/ FLORENCE E. HAWKINS.

Subscribed and sworn to before me this 9th day of March, 1954.

/s/ IRVING HELBLING,  
Field Examiner.

Admitted in evidence January 9, 1956.

## GENERAL COUNSEL'S EXHIBIT No. 2-Z

[Title of Board and Cause.]

## REPORT ON CHALLENGES

Pursuant to an Agreement for Consent Election entered into by the above-named parties on February 5, 1954, a representation election was conducted on February 18, 1954, among certain employees of the above-named Employer to determine whether they wish to be represented for the purposes of collective bargaining by the United Fresh Fruit & Vegetable Workers Local Industrial Union No. 78, CIO. The results of the election, as set forth in a Tally of Ballots served on all the parties on that date, were as follows:

Approximate number of eligible voters....	182
Void ballots .....	0
Votes cast for United Fresh Fruit & Vegetable Workers Local Industrial Union No. 78, CIO .....	69
Votes cast against participating labor organization .....	70
Valid votes counted .....	139
Challenged ballots .....	65
Valid votes counted plus challenged ballots .....	204
Challenges are sufficient in number to affect the results of the election.	

Pursuant to paragraph 6 of the Agreement for Consent Election, the undersigned has investigated

General Counsel's Exhibit No. 2-Z—(Continued)  
the challenged ballots and issues this report  
thereon.

The Challenges to the Ballots of Hugh Davis, Rupert Hamlin, and Homer Miller.

The Union challenged the ballots of these employees and contends that they are ineligible to vote because they are not employed within the bargaining unit as set forth in the consent election agreement. Each of these employees is engaged in the maintenance of the equipment in the Employer's plant. They are paid on an hourly basis and have no supervisory responsibility.

The unit agreed upon by the parties is "all packing shed employees employed by the Employer at its Indio, California, packing shed; excluding all office and clerical employees, and also excluding watchmen, guards, supervisors, and professional employees as defined in the National Labor Relations Act, as amended."

On December 10, 1951, a consent election agreement was entered into for a unit substantially similar to the one herein involved. The same maintenance employees worked for the company at that time. They were on the eligibility list used for the conduct of the election on December 17, 1951, and voted unchallenged ballots. Although they were clearly in the bargaining unit as first certified, the Union apparently has not bargained for them, and no wage rate is set up for maintenance employees

General Counsel's Exhibit No. 2-Z—(Continued)  
in the contract which existed between the Company  
and the Union.

On the morning of the day on which the election in this matter was conducted a conference was held with the parties by the Board's Field Examiner. At that time the eligibility of the maintenance employees was discussed and the Union's representative agreed that they were eligible to vote in the election.

In view of the inclusion of the maintenance employees in 1951, the agreement prior to the holding of the present election that they were eligible to vote, and the all-inclusive language of the unit definition in the consent election agreement, without any specific exclusion of maintenance employees, the undersigned finds that this classification is included in the bargaining unit and, therefore, the three above-named employees are eligible to cast ballots in the election. The undersigned, therefore, overrules these challenges of the Union and directs that these three ballots be opened and counted.

The Challenges to the Ballots of Gracie Carr, Effie Gray, Jeanette Jones, and Lora McMullen

The Union challenged the ballots of these employees and contends that each of them is a supervisory employee and, therefore, ineligible to vote.

The investigation reveals that Carr, Jones, and McMullen are floorladies on each of the Company's



General Counsel's Exhibit No. 2-Z—(Continued)  
grading lines. Effie Gray is the general floor supervisor. The line floorladies have no authority to hire, discharge, or effectively recommend personnel action, while Gray has such authority. The Company agrees that Gray possesses substantial supervisory authority and is not eligible to vote.

During the eligibility conference on the morning of the election the Union's representatives agreed that the three line floorladies exercised no substantial supervisory responsibility and that they should be eligible. In addition to this agreement, these employees have always been covered by the contract which existed between the Company and the Union.

In view of the above, the undersigned finds that Effie Gray possesses substantial supervisory authority and, therefore, sustains the challenge to her ballot. Carr, Jones, and McMullen are not supervisory employees and, therefore, the challenges to their ballots are overruled. It is directed that their ballots be opened and counted.

#### The Challenges to the Ballots of William Lopez and Francisco Perez

The ballots of these employees were challenged by the Company because their names did not appear on the Company's seniority list for the 1953 season. The investigation has revealed that both of these persons had previously been employed by the Company until they were inducted into the armed

General Counsel's Exhibit No. 2-Z—(Continued)  
services. Each of them has been on military leave, and each returned to the Company's employ in February, 1954. The Company concedes that they are eligible to vote, and the undersigned so finds. It is directed that their ballots be opened and counted.

#### The Challenge to the Ballot of Lucy Chavez

The Company challenged the ballot of this employee and contends that she quit her employment because she had refused to accept work on the night shift. The investigation has revealed that the Company's contention was made in error as Chavez had, in fact, accepted such night shift work and was employed by the Company during the eligibility period. The Company concedes she is eligible to vote, and the undersigned so finds. It is directed that her ballot be opened and counted.

#### The Challenges to the Ballots of

Arce, Maria  
Barajas, Lupe  
Carranza, Espiranzo  
Chavez, Mary  
Cokeley, Helen  
Cox, Howard  
Curiel, Eva  
DeZamilja, Jesus  
Forney, Lilly May  
Gomboa, Virginia  
Garcia, Videl

## General Counsel's Exhibit No. 2-Z—(Continued)

Garcia, Trinidad  
Gomez, Matilda  
Grey, Troy  
Hinojosa, Hector  
Hinojosa, Maria  
Ingraham, Shirley  
Kraus, Florence  
Lopez, Josephine  
Lowe, Dorothy  
McCain, D.  
Montes, Fred  
Murrietta, Ruth  
Narciso, Curiel  
Pizano, Jesse  
Pizano, Pedro, Jr.  
Putman, Ann May  
Reyes, Carolina  
Romero, Ignacio  
Salas, Josephine  
Santos, Joe  
Singh, Maria  
Tyler, Ann  
Villalodas, Thelma  
Williams, Ruby

Eligibility to vote in the election was described by the parties in the consent election agreement as:

“Those eligible to vote shall be all persons who were employed in the bargaining unit set forth above during the last complete payroll period in January, 1954, and including all per-

## General Counsel's Exhibit No. 2-Z—(Continued)

sons whose names appear on the 1953 seniority list; but excluding any such persons who have been permanently replaced and those employees who have quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election.”

The investigation has revealed that none of the employees named were employed by the Company during the last complete payroll in January, 1954, nor did their names appear on the 1953 seniority list. None of these persons had enough continuous service during the preceding packing season to qualify them to permanent seniority. Most of these persons were employed by the Company until December 1, 1953, at which time a strike occurred. Most of them were strikers. On December 8, with the termination of the strike, they applied unconditionally to return to work, but were not re-employed because work was no longer available due to a substantial loss of the Christmas trade.

The Union contends that if these employees were not replaced during the strike they are eligible to vote, either as strikers or as laid-off employees.

The undersigned finds that as none of these persons qualified for permanent seniority their expectation of re-employment in the future is merely speculative. As they were not employed during the payroll period of January, 1954, nor did they qualify for a place on the 1953 seniority list, the undersigned finds that these employees do not meet

General Counsel's Exhibit No. 2-Z—(Continued)  
the eligibility test established by the parties in the consent election agreement. Therefore, the undersigned finds that the challenge to each of these ballots should be sustained.

The Challenges to the Ballots of Everett Barham,  
Alberto Esquer, Albert Luna, Ernest Martinez,  
and John C. Pogue

These five persons were out on strike on December 1, 1953. They unconditionally applied for reinstatement on about December 8, 1953. During the strike the Company hired approximately 35 employees as replacements for the strikers. As most of the strikers were employed as either graders or packers whose jobs are indistinguishable from other graders or packers, the Company conceded that most of the replacements could not be identified with any particular employees. It, therefore, agreed that none of the packers or graders could be considered as having been replaced during the strike. It reserved the right, however, to challenge those strikers who had been employed in jobs easily identifiable, and who had been replaced.

Everett Barham was employed to remove fruit from the fumigator and deliver it to the washer. He was the only person performing such work. He was permanently replaced on December 2, 1953, by Castulo Garcia.

Alberto Esquer was a carloader and also performed some work in the shipping department. He



General Counsel's Exhibit No. 2-Z—(Continued)  
was permanently replaced on December 2, 1953, by  
Albert Porter.

Albert Luna was a set-up man in the packing department. He was permanently replaced on December 2, 1953, by Jack Reynolds.

John C. Pogue was a pallet truck operator. He was permanently replaced on December 4, 1953, by Francisco Duenaz.

Ernest Martinez was a carloader and also performed some work in the shipping department. He was permanently replaced on December 2, 1953, by Charles Gamble.

As the consent election agreement excluded from eligibility those persons who had been permanently replaced, and as the investigation reveals that specific replacements were hired for each of these five persons, the undersigned finds that each of them is ineligible to vote and, therefore, sustains the challenges to their ballots.

The Challenge to the Ballot of Celia Vasquez,  
Maude Place and Mary Lozano

The Company challenged the ballot of Celia Vasquez on the ground that she had refused work when she was called. The investigation reveals that in September, 1953, just before the beginning of the packing season, the Company sent Vasquez a registered letter asking her to apply for employ-

General Counsel's Exhibit No. 2-Z—(Continued)  
ment for the coming season if she was interested. The Company received no reply to this letter, and the letter was returned to the post office marked unclaimed. As Vasquez did not answer the call for employment at the beginning of the season, her name was dropped from the seniority list. On November 19, 1953, she applied for work and was hired as a new employee. She worked until the strike on December 1, but did not gain re-employment after that time.

Maude Place was offered employment at the beginning of the 1953 season, but refused to accept it. She was dropped from the seniority list and has not been employed since that time.

As these employees were not working for the Company during the last complete payroll period in January, 1954, and as they had lost their status on the 1953 seniority list, they do not meet the eligibility test set up in the consent election agreement. The undersigned, therefore, sustains the challenges to their ballots.

Mary Lozano was a striker who was reinstated to her previous job after the strike. She worked until February 9, 1954, at which time she quit her employment. Although she was employed by the Company during the last payroll period of January, 1954, and was not so employed at the time of the election, she, therefore, was ineligible to vote. The undersigned sustains the challenge to her ballot.

## General Counsel's Exhibit No. 2-Z—(Continued)

## The Challenges to the Ballots of

Carrillo, Manuela  
Chester, Ellen  
Dallosta, Lucretia  
Fieber, Lillian  
Flores, Florence  
Gagnon, Anna  
Quijadas, Lupe  
Romero, Socorro  
Ruby, Mayme  
Skinner, Pauline  
Warren, Beryl  
White, Catherine

Each of these persons had status on the Company's 1953 seniority list, and each of them went out on strike on December 1, 1953. Each unconditionally applied for reinstatement on or about December 8, 1953. In the second week of January, 1954, the Company started a night shift on which approximately 17 persons were to be employed. The Company offered these persons employment on the night shift; however, each of them refused for personal reasons. In view of this refusal to accept night shift work, the Company contends that these persons have quit their employment and, therefore, are not eligible to vote.

The investigation reveals that each season the Company has had a night shift which usually starts toward the middle of the season. By the time the

General Counsel's Exhibit No. 2-Z—(Continued)  
night shift was to begin all persons on the seniority list have been offered employment. At the beginning of each season the employees fill out new applications for employment, and they are required to state whether or not they will accept night shift work.

In the past, in staffing the night shift the Company first offered to all day shift workers the opportunity to transfer to the night shift. Most employees refuse the offer. They were always free to do so, and their refusal did not in any way affect their status with the Company. Many of the employees who refused had worked on the night shift in previous seasons, and many of them had stated in their applications that they would accept night shift work. None of these factors ever affected their status or their freedom to decline such employment.

In the past seasons, when it was impossible to get enough employees to transfer to the night shift, the Company then checked the applications of those persons not employed and offered employment to all who had expressed a willingness to work on the night shift. Failing to secure enough employees in this manner, the Company then offered such employment to any other person willing to accept it.

After the strike the Company wished to recall strikers when they were needed in a nondiscriminatory manner. It advised the Union's representative that it intended to start the night shift, and, in order not to discriminate against strikers, it intended to

General Counsel's Exhibit No. 2-Z—(Continued)  
offer employment on the night shift to those strikers on the seniority list who were not employed. The Union's representative stated that such a policy would not be regarded by the Union as discriminatory.

When recruitment for the night program began, the Company, as was its usual custom, offered such employment to its day shift employees. Failing to secure enough transferees, it then offered employment to those strikers on the seniority list who had not been re-employed. It started with the person at the top of the list.

The Company contends that always in the past when an employee refused employment for day work at the beginning of a season he would be dropped from the seniority list and lost his seniority status. It would apply the same rule under these circumstances.

The consent election agreement provides that all persons whose names appear on the 1953 seniority list are eligible to vote, excluding those persons who have quit or been discharged for cause. Clearly, these employees were not discharged, nor can the undersigned find that they have quit their employment. It appears that always in the past employees were free to accept or reject night shift work, and their rejection of such work in no way affected their status as employees. In the past, of course, employees who rejected night shift work were employed



General Counsel's Exhibit No. 2-Z—(Continued)  
at the time of such rejection and merely continued on in their day shift jobs. However, at the beginning of the season when they filled out their applications for employment and expressed unwillingness to accept night shift work, their status was not affected.

In the present instance the employees were not advised that a rejection of the offer of night shift employment would affect their status on the seniority list. The employees could reasonably conclude that the previous practice continued, particularly, as each of them had registered for re-employment after the strike, and as most of them inquired about the probability of employment on the day shift when they rejected the night shift offer. The status of these employees was no different from those persons then employed; the only exception being that no work was then available for them. The employees on the day shift freely rejected the offer of night shift employment, and their employee status was not affected. To rule that these challenges should be sustained would be to find that the persons involved were not employees, but were merely applicants with no previous employment with the Company. It appears to the undersigned that essential to a conclusion that a person has "quit" his employment is a finding that he engaged in conduct or performed an act which he could reasonably believe would lead to a severance of the employer-employee relationship. This is not the case here.

General Counsel's Exhibit No. 2-Z—(Continued)

The Company contends that to permit these employees to retain their status on the seniority list after having rejected employment is unfair to those persons below them on the list, as a rejection of day shift work has always meant the loss of seniority status. By holding that these employees are eligible to vote, the undersigned makes no finding as to what the Company's future hiring practice should be in the light of these circumstances. It is merely held that these persons, under these circumstances, have not lost their employee status because of their rejection of the offer of employment on the night shift. The undersigned finds, therefore, that the challenges to the ballots of these 12 employees should be overruled and directs that these ballots be opened and counted.

Dated at Los Angeles, California, this 24th day of March, 1954.

/s/ HOWARD LeBARON,  
Regional Director, National Labor Relations Board,  
Twenty-first Region.

Admitted in evidence January 9, 1956.

## GENERAL COUNSEL'S EXHIBIT No. 2-GG

[Title of Board and Cause.]

ORDER DIRECTING HEARING ON  
CHALLENGES

Pursuant to an Agreement for Consent Election, an election was held in the above-entitled proceeding on February 18, 1954, under the direction and supervision of the Regional Director in which challenged ballots are sufficient in number to affect the result of the election. On March 24, 1954, the Regional Director issued and served upon the parties his Report on Challenges. On April 8, 1954, the Employer filed Objections to Report on Challenges wherein the Employer asserts that the Regional Director erroneously resolved the challenges to the votes of:

Carrillo, Manuela

Chester, Ellen

Dallosta, Lucretia

Fieber, Lillian

Flores, Florence

Gagnon, Anna

Quijadas, Lupe

Romero, Socorro

Ruby, Mayme

Skinner, Pauline

Warren, Beryl

White, Catherine

and also filed a Petition for Hearing on Challenges. No objections were filed by either party to the reso-

lution by the Regional Director of other challenges.

The Regional Director having duly considered the Employer's objections has decided that a hearing should be held to resolve the issues raised by the challenges to the ballots of the twelve individuals above named. Accordingly, it is,

Ordered that on the 29th day of April, 1954, at 10:00 a.m., in the Main Accounting Office of the California Date Growers Association, located at corner of Neglet Noor and Highway 99, in the City of Indio, a hearing will be conducted before a hearing officer upon said challenges, at which time and place the parties above named will have the right to appear in person or otherwise and give testimony and present argument, and it is further

Ordered that the testimony at such hearing shall be limited to matters relating to and affecting the status of the above-named individuals as employees and their eligibility to vote under the terms of the consent election agreement.

In due course thereafter, the undersigned shall issue and serve upon the parties a Supplemental Report on Challenges.

Dated at Los Angeles, California, this 22nd day of April, 1954.

[Seal]     /s/ GEORGE A. YAGER,  
Acting Regional Director, National Labor Relations  
Board, Twenty-first Region.

Admitted in evidence January 9, 1956.

GENERAL COUNSEL'S EXHIBIT No. 2-KK

Before the National Labor Relations Board,  
Twenty-first Region

Case No. 21-RM-280

In the Matter of:

CALIFORNIA DATE GROWERS ASSOCIA-  
TION,

Employer and Petitioner,

and

UNITED FRESH FRUIT & VEGETABLE  
WORKERS LOCAL INDUSTRIAL UNION  
No. 78, CIO,

Union.

Thursday, April 29, 1954

Before: George H. O'Brien, Hearing Officer.

Appearances:

BEST & BEST & KRIEGER, By  
JOHN BABBAGE,

Appearing on Behalf of the Company.

JOHN JANOSCO,

Appearing on Behalf of the Union.

\* \* \*

PROCEEDINGS

\* \* \*



General Counsel's Exhibit No. 2-KK—(Continued)

Hearing Officer: I think, so that we may know what we are talking about here, I suggest that the report on challenges, [4] dated 21st March, 1954, be identified as Board's Exhibit No. 1;

That the objections to the report on challenges filed by the employer on either April 6th or 8th—I cannot make out the date stamp—

Mr. Babbage: It should be April 8th.

Hearing Officer: —April 8th, be identified as Board's Exhibit No. 2;

And that the Regional Director's order directing this hearing, shall be marked Board's Exhibit No. 3, which should frame the issues in the proceeding this morning. [5]

\* \* \*

### JAMES F. WRIGHT

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Babbage:

Q. Will you state your name?

A. James F. Wright.

Q. And your occupation?

A. General Manager of California Date Growers Association.

Q. And, as general manager, do you have the responsibilities for the supervision of the operations of the California Date Growers Association?

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. That is right.

Q. Now, you are familiar with the fact that the California Date Growers Association and the CIO, United Fresh Fruit & Vegetable Workers, Local Industrial Union No. 78, entered into an agreement for a consent election, the date of which I do not have as a matter of record, but which agreement was entered into in the latter part of January, 1954; is that right?

A. Yes.

Hearing Officer: The date is material. The date of approval is February 5, 1954.

Q. (By Mr. Babbage): Thereafter, on the 18th day of February, an election was held at your plant?

A. That is right.

Q. Mr. Wright, would you describe for the Board, the nature of the date packing operation in this plant and just what this plant does in connection with the processing and packing of dates?

A. We have been in the business of packing dates since 1919. We receive the fruit from the field, grade it, pack it and ship it to market. We normally start operations some time in August or September. The operation continues until the following spring.

The number of employees that we have varies upon the [8] season, depending upon how many dates we have to pack that particular year.

Q. I also want to bring out the form of organization which you have. You are a co-operative, is that right?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. We are a co-operative, made up of some eighty to one hundred growers.

Q. And when you refer to "growers"—describe just what you mean by a "grower"?

A. Date growers are people who are in the business of raising and harvesting dates.

Q. When those dates come into the plant, what type of process do you go through in connection with these dates?

A. When they first come into the plant, they are fumigated, then graded. Some dates require hydration to add moisture content to them. Some are what we call a "natural" date. Then the fruit is packed in various containers. [9]

\* \* \*

Q. Then, if you don't have a ready market for the dates, do you have a method for storing them?

A. We have cold storage facilities. [11]

Q. You have those here on the plant?

A. Yes.

Q. Would you explain to us the frequency with which dates arrive in the plant?

In other words, is this a crop that everything becomes ripe right away and you have to pick it immediately, or is it a crop that tends to ripen at different places at different times?

A. The crop is harvested from September normally through February.

Q. What are the factors that affect the time at which a crop is harvested?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. Well, weather conditions; a definite amount of heat is required to mature the dates and until a certain number of heat days are obtained, the fruit isn't mature, and cannot be packed and that varies, depending upon the location in the valley.

Q. In other words, you are not able to control the time at which dates are coming into the plant?

A. No.

Q. On the basis of knowing exactly how many are going to come in at any particular time during the year?

A. No.

Q. Now, can you predict from one year to the next, how many dates you are going to pack? [12]

A. No, we cannot.

Q. Why can't you?

A. Well, we have growers who are free to leave each year. The amount of fruit that is grown from year to year in the valley varies.

A few years ago we had thirty-five and thirty-six manpower crops and then latterly the last few have been under thirty men. It depends upon the elements.

Q. Going into a little more detail on the effect of the elements, is it true that at the beginning of a season—I will withdraw that question.

How do you determine each year when your season is going to start—that is, when your packing season is going to start?

A. Well, there are two conditions. We normally carry some fruit over from the previous season to



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

pack and distribute in the month of September; depending upon how much fruit we carry over, it will depend upon when we start the packing operation.

Some years we start in August and some years we start in September. We know normally by August, within two or three weeks of when the fruit will mature and start to come into the packing house. That is, the current crop.

Q. When you say you sometimes have fruit left over from the previous season, do you mean by that that this fruit can be stored in an uncured or an unprocessed form, for a period of a [13] year or under a year?

A. Dates, being tropical fruit, under storage conditions, can be held for many, many months over a year, depending upon the type of date. They can be held as high as two or three years.

\* \* \*

Q. In a situation where you have a light market for dates—in other words, the particular opportunities for the sale of the [14] dates is say, less than it was the year before, or it doesn't have particularly encouraging characteristics, do you start——

Describe how you would start the packing season, whether you are operating on dates carried over from the previous year or dates that were just coming in for the first time this year.

A. We normally start the packing season with carry-over fruit and that fruit is carried in, the ma-



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

jority of it, in a loose condition and we start off normally, with a packing line to pick these carry-over dates.

Our first operation normally is to call in a packing crew. [15]

\* \* \*

Q. When you start operations, do you ordinarily start with one line—withdraw that question.

How many lines do you operate in your plant?

A. Well, we have three lines in the packing room and the overwrapping packages and we have three cellophane wrappers.

Q. Do you start off with three lines at once at the beginning of the season?

A. Practically without exception, we start with one line.

Q. Could you describe for us the practice that is followed in calling employees or getting in touch with employees whom you wish to have operate one of these packing lines?

A. Either the plant superintendent or the woman in charge of [18] the packing room will contact the girl in the personnel office and she will, through the use of the telephone, endeavor to contact the people required for the line and tell them when work is to start and when they are to report in.

Q. And who is the girl in the personnel office who does that work now?      A. Florence Hawkins.

Q. For how long has she done that work?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. She started into it last September—this particular job.

Q. And who did it prior to the time she did?

A. Levina Kaltenbach.

Hearing Officer: Would her name be on one of the seniority lists?

The Witness: No, but it is spelled K-a-l-t-e-n-b-a-c-h.

Q. (By Mr. Babbage): Was there anyone else who assisted her or did they work in conjunction with her, prior to the time that Florence Hawkins did the work?

A. Seasonally we had someone else in the office who would aid—but I cannot recall the girl's name. I might add that, during the last season, two weeks prior to the estimated start of the season, we mailed notices to the employees of the previous season, stating the date that we anticipated starting operation.

Q. Do you recall when you started operation during the last season? [19]

A. We started packing before Labor Day. But we didn't start the grading until somewhere around the 25th of September. But, if my memory serves me right, we started packing around the week before Labor Day or the day after Labor Day.

Q. You were packing carry-over fruit, in other words? A. Yes.

Q. Mr. Wright, would you tell us the basis upon which you called employees or which employees were

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

called by your personnel department, who had the responsibility, during the last season?

A. Yes. In the packing department we had a seniority list and Florence Hawkins called the girls in order by their number on the seniority list until she was able to obtain enough girls to run a packing line.

Q. Do you recall how many employees were called to start the packing operation in the 1953 season?

A. Approximately seventeen.

Q. Now, you mentioned a seniority list, would you tell us how that seniority list was made up?

A. The seniority list was developed in November. This particular seniority list, November of 1952, it was made. A girl had to have worked either twelve weeks in a particular season or fifty per cent of the season, if it was less than twelve weeks.

Q. In other words, the factor of the length of time which an [20] employee had worked for the company, wasn't the controlling factor. It was the question of whether she had worked twelve weeks consecutively in some previous season?

A. Yes.

Q. Did it have to be some previous season or the immediately preceding season?

A. The immediately preceding season and so on back.

Q. Or it could also be the season which began in 1952?

A. Yes.

Q. In other words, if she had worked twelve

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

weeks in 1952, prior to the time the seniority list was developed?      A. That is right.

Q. She was also to be on the seniority list?

A. That is right.

Hearing Officer: I wonder if that is clear.

A girl might work from say, 1927 to 1935 steady; would she stay put on the list if she hadn't worked since?

The Witness: No.

Hearing Officer: How recently had she to work to get on the list?

The Witness: She had to work the previous season.

Q. (By Mr. Babbage): She would have had to have worked——

A. ——twelve weeks in the previous season.

Q. In 1951?

A. When the seniority list was made up in November, we had [21] started operations that particular August and some girls had the opportunity to have worked twelve weeks during the 1952 season.

Hearing Officer: What I am trying to get at is, you could have a steady employee who worked for you from the time the plant started until 1950, but who had missed the 1951 season, but she would not be on this list?

The Witness: Unless there was a legitimate reason for her absence.

Hearing Officer: Yes. I see.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

The Witness: But if she had worked somewhere else that season, she would have lost her seniority.

Q. (By Mr. Babbage): Was that the first year that you had a seniority list as such? A. Yes.

Q. And what basis did you use for determining what employees were entitled to employment, prior to the time this seniority list was developed?

Did you have some other list or some other arrangement that you followed?

A. Prior to November, 1952, we utilized the payroll records of the previous season and we had, what we called a "priority list," a list that the girls got on because they were capable of running a box machine or capable of running a wrapping machine. [22]

Now, I am talking about the people who are on this list prior to 1952. They were willing to work two or three days a week. They were willing to work maybe four or five hours in a day if that was what we needed. They were willing to work when the weather was warm.

Q. Hot, you mean?

A. Hot, yes. And whether they were willing to work nights. [23]

\* \* \*

Q. (By Mr. Babbage): Mr. Wright, if you will refer to Board's Exhibit No. 1, which is the report on challenges. On page 8 thereof.

And also to Board's Exhibit No. 2 which is the objections to the report on challenges.

And I would like to ask you if you will read the



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

first paragraph on page 8 of the report on challenges.

Hearing Officer: Just to yourself, sir.

Mr. Babbage: Yes. You don't have to read it into the record, just to yourself.

The Witness: Yes. [24]

Q. (By Mr. Babbage): Is that paragraph correct? A. Yes, it is.

Q. Now, I will ask you to read the second paragraph on page 8 of Board's Exhibit No. 1.

A. Yes.

Q. Now, I ask you, Mr. Wright, if that paragraph in the report on challenges correctly states the manner in which your company operates?

A. The first sentence states that, "each season the Company has had a night shift which usually starts toward the middle of the season."

That is correct.

The second sentence states, "By the time the night shift was to begin, all persons on the seniority list have been offered employment."

The past season is the only season which we operated, or it was the first season where we operated, where there was a seniority list in effect.

It is true that in that season we had offered employment to everyone on the seniority list.

The closing sentence, "At the beginning of each season the employees fill out new applications for employment, and they are required to state whether or not they will accept night shift work."

They are not required to state it. There is a place on [25] the form to state it and——

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

Q. Isn't it a fact, Mr. Wright, that some of the applications that have that statement on them are filled out and in some applications it is left blank; is that right?

A. That is true. Some say either, some say nothing and some say yes.

Q. And do you not require the employee to state one way or the other?      A. No.

Q. Now, you say that during the 1953 season, which—you say that 1953 was the only season that you operated under the seniority list?

A. From the start of the season.

Q. Now, when did the night shift begin in the 1953 season?      A. Some time in October.

Q. And I will refer you now to the third paragraph of Board's Exhibit No. 1 and ask you to read that paragraph.      A. Yes.

Q. Now, is it true that in starting the night shift, the company first offered all day shift workers the opportunity to transfer to night shift, either in the past or in the 1953 season?

A. No, that isn't. We have offered—first of all, in the 1953 season, we did not ask the people on the day shift whether they would like to work nights or not. [26]

We went out to staff the night shift from our applications. It was known that we were going to have a night shift and if my memory serves me right, two people asked to be transferred to the night shift.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

Q. That is, two people who were working days at that time?

A. Yes. We never asked everybody on the day shift. Specifically, we were interested in obtaining a few people who could form the nucleus of the crew at night. Maybe one or two foreladies and some box machine operators and wrapping machine operators.

The rest of the crews we normally manned from our applications in the personnel office.

The next sentence states, "Most employees refuse the offer." That isn't true because we didn't offer it to them.

Q. Then, it goes on to state that, "they"—meaning the employees—"were always free to do so"—meaning that they were always free to refuse the offer, "and their refusal did not in any way affect their status with the company."

Now, I will point out to you that this particular portion of this exhibit refers to what your past operations have been and I ask you if that is a correct statement of your past operations?

A. The way it is written—of course, they were free to because it is free country—but they recognized that by taking night shift work, that they could advance themselves in [27] the company, that by going onto the night shift, they might have an opportunity of becoming a machine operator and as a result, better their position and also, going back in the past, by volunteering say, to go onto the night shift and as a result, become a machine operator.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

They knew that when the night shift closed, that they would come back to the day shift and the chances are if they wished to finish out the season and raise themselves on our priority list, raise their position within the company, and they were free to raise themselves or not. It was up to them. But they knew by doing it, that they would better their position.

Q. If an employee accepted any work prior to the time of your seniority list referred to in this exhibit, then it would either place him on the priority list or increase his or her rating on the priority list?

A. That is right.

Q. Is that right?           A. Yes.

Hearing Officer: That refers to a period before 1952?

The Witness: Yes.

Hearing Officer: Before November, 1952, when you first established this list?

The Witness: That is right.

Hearing Officer: I am sorry. [28]

Mr. Babbage: All right.

Q. (By Mr. Babbage): I will refer you to the last—which is the fourth paragraph on page 8 of Board's Exhibit No. 1, and I ask if you will read that paragraph?

A. Are you referring to the bottom part?

Q. Yes.           A. Yes.

Q. Does that paragraph correctly state the manner in which the company was operated in past sea-



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

sons and for the purpose of answering your question, I think we will have to assume that "past seasons" means prior to the time that the seniority list was put into effect.

Hearing Officer: The testimony now is that that was November, 1952?

Mr. Babbage: Yes.

The Witness: Well, we never endeavored to completely man the night shift from people who were working days. We were interested in getting a nucleus of people for the night shift and foreladies, and machine operators, but we went through our applications and records which we had, to hire the main nucleus of the night shift.

I think the point that I want to get across is that this appears we first went to our day shift people to try to get them to go to work at nights, and that wasn't the way we did it. [29]

Q. I will refer you to the first paragraph beginning on page 9 of Board's Exhibit No. 1, Mr. Wright.

After you have read that——

\* \* \*

Q. (By Mr. Babbage): Mr. Wright, are you reading that paragraph? A. Yes.

Q. And will you advise the Board whether that correctly stated the facts therein?

A. Yes, it does.

Q. I will refer you to the second paragraph beginning on page 9 and ask you to read that.



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. Yes.

Q. Now, I might mention in developing my question with respect to that paragraph, that it appears that the language in that paragraph refers to a night shift which was begun subsequent to the time the strike occurred.

In other words, you have previously testified that you had [30] a night shift which began in October of 1953. Now, in this paragraph it refers to a second night shift and would you tell us when the second night shift began and the purpose for the second night shift?

A. If my memory serves me right, it was on the 18th of January. The purpose for the night shift—I mean, the purpose of the night shift was to pack a specialized package. The reason we had to put on a night shift was because it was a new pack and we only had bought enough pots to convert one box making machine and one wrapping machine.

Q. You just had one line?

A. Which was capable of offering this special package and we needed additional volume so we put on the night shift and if my memory serves me right, it was the 18th of January.

Q. Did you offer employment on that night shift to your day shift employees who were working at that time?

A. No, we did not.

Q. Did you offer employment to the strikers on the seniority list who had not been re-employed?

A. Yes.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

Q. And on what basis did you do that?

A. We started at the top of the seniority list. All people who were not working and who had stated that they desired to be re-employed or reinstated, and go back to work, they had signed a list back on December 8th— [31]

Q. Was that an availability list? A. Yes.

Q. And did any of them indicate on that availability list whether or not they would work days or nights?

A. No, they just stated that they would go back to work.

Q. In other words, it was just an offer to go back to work? A. Right.

Q. Now, I will refer you to the third paragraph beginning on page 9 and ask you to read that.

A. Yes.

Q. Is that a correct statement of your position, with the exception of the fact that it refers to a seniority list rather than a priority list?

A. That is right.

Q. I will refer you to the next paragraph, beginning on page 8, which would be the fourth paragraph—I mean on page 9—and ask you to read that?

A. Yes.

Q. Would you comment on that paragraph, Mr. Wright, and explain to us wherein it does conform to what has been the previous practice of the company and wherein it doesn't, if it doesn't?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. The consent election form did provide that all people on the 1953 seniority list were eligible to vote, excluding those people who had quit or had been discharged for cause. [32]

The last sentence states, "Clearly, these employees were not discharged, nor can the undersigned find that they have quit their employment. It appears that always in the past employees were free to accept or reject night shift work, and their rejection of such work in no way affected their status as employees."

Actually, that isn't true. This was the first time that the question of a seniority list, seniority worker, whether she would work night shift or not, had occurred.

Mr. Babbage: Would you read that answer back, Miss Reporter, please?

(Answer read.)

The Witness: In other words, the seniority list was put in, in November, 1952. We already had had our night shift. When they put on the night shift on October, 1953, all the people on the seniority list had been called to work. That was the first time the situation arose where we called a person on the seniority list to work at nights.

I might mention here that in our negotiations last fall, with regard to the grading room employees, it was decided and agreed in negotiations, that if an employee after the first of the year—we were re-

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

ferring both to grading and packing—didn't want—only when an employee could get a leave of absence for some definite thing and the employee could not get a leave of absence—if, for example, we had only three or [33] four days' work in a week, that the employees, if they did not report, they would lose their seniority.

They could not get a leave of absence because our operation had been changed. I point that out to illustrate an agreement that had been reached prior to this time.

Now, in the past the workers knew, the employees knew that by working night shifts, working when the weather was hot, working three days a week, or 4 and 5 hours a day, by doing those things that they would be on the priority list and they knew that they would work the longest in the season and they also knew that they would be the first called back.

This is specifically true in the packing department and they knew by refusing that they would lose their status on the priority list.

Q. Now, when you say that they would lose their status on the priority list, do you mean that they would no longer be on that priority list?

A. That is right.

Q. I will now refer you to the last sentence of that paragraph which states, "However, at the beginning of the season when they filled out their applications for employment and expressed unwilling-

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

ness to accept night shift work, their status was not affected."

Would you comment specifically on that sentence, if you can? [34]

A. At the time of filling out that application, the person who was showing a preference——

Q. Let me put the question this way. Did you have a—I will withdraw that question.

Under the priority list, when a person stated that they would not work a night shift, is it true that his status wasn't affected?

A. Well, they knew by not working, by being unwilling to do these things regarding our priority list, that they would not raise their position, that they would not be able to get on the list and if they did and they changed, they would lose their position and——

Q. Well, let me ask you this question. I will withdraw that.

Was anyone who wanted to work here entitled to fill out an application for work? A. Yes.

Q. In other words, the application form wasn't limited to the people who were just on the seniority or the priority list? A. That is right.

Hearing Officer: If I may interrupt for just one moment. I understood, Mr. Wright, at the beginning of the season, you would look for your supervisory personnel of your night shift from the day shift?

The Witness: That is normally so. [35]

Hearing Officer: Yes. And when you would offer



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

a night shift job to a day shift worker, that would be in the nature of a promotion for her?

The Witness: Yes.

Hearing Officer: Or an opportunity for promotion if she made good?

The Witness: Yes. If they were all machine operators or floorladies during the day, the opportunity of advancement was that they could be in the position of, if they went on the night shift, they could have an opportunity to advance and then when the night shift was over, those employees stayed on.

Hearing Officer: So, when a girl had shown special aptitude or she looked like a leader with leadership material, and you offered her a night shift job, and she turned it down, then that was the last chance she got?

The Witness: Yes and people would volunteer to go on the night shift just to get the opportunity.

Q. (By Mr. Babbage): Now, I will refer you to the first paragraph on page 10 and ask you to read that. A. Yes.

Q. And I will ask you to comment on to what extent that paragraph states the practice of the company and to what extent it doesn't, if it doesn't?

A. Well, it says, "the employees were not advised that a rejection of the offer of night shift employment would affect their [36] status on the seniority list."

That is true. They were not advised. The girl in the personnel department, I don't think should make

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

that decision any way and she was the one who was contacting the employees.

Q. Just a moment. Would you——

Mr. Babbage: Well, will you read that answer, please?

(Answer read.)

Hearing Officer: The witness was answering your previous question in between, I think.

Would you read the previous question, please?

(Question read.)

The Witness: I think that the employees under the operation that existed before November, 1952, could reasonably conclude that by refusing night employment and by refusing employment to work—by refusing night employment, they could conclude that their position with the company would be affected, just the same as they concluded, or could conclude, if they rejected work in September, that their status with the company was affected, that their status either on a seniority or on a priority list was changed and that they would lose what they had gained.

Then it goes on to say, "The status of these employees was no different from those persons then employed; the only exception being that no work was then available for them. The employees on the day shift freely rejected the offer of night [37] shift employment, and their employees' status was not affected."

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

That isn't true. It did not offer the work to the people on the day shift. We, in this particular case, we had a qualified group of people on the seniority list to form the nucleus. They were all qualified to work and handle the night shift and we did not offer employment to the people on the day shift.

So, there was a difference between the status on the day shift and these people we got for night work.

Q. Now, under the previous practice of the priority list, that is, when I refer to the previous practice, I mean the extension of the priority list as distinguished from it being called a seniority list.

What was the effect of a rejection of an offer of night shift work?

A. They would be off the priority list.

Q. Mr. Wright, can you tell us whether any of the employees who are referred to at the top of page 8 of Board's Exhibit No. 1 had previously worked on night shift?

A. Yes, quite a few of them had. In fact, most of them had at one time or other.

Hearing Officer: Have you checked your records recently on that?

The Witness: Yes. We went over it, Mr. O'Brien, when Mr. Helbling was down and I do not have that in front of me but we [38] gave that information to Mr. Helbling when he was here.

Q. (By Mr. Babbage): In other words, that information is available?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. Yes, I have got it somewhere.

Q. We will make an arrangement for you to present that information subsequently in your testimony.

A. I might state here, too, Mr. Babbage, that by refusing, and I think this is what the Hearing Officer—I mean, the Investigating Officer—I am confused here.

By refusing night shift work, we are not stating that the individual would not be re-employed again, but we are stating that they would only—that it was our practice after all of the other people who had accepted or who were here on the priority list and were employed—they would be re-employed, just like, say, in our day shift operation.

If someone should leave for a season or quit or not report in, that person may be re-employed again, but it would only be after all the people on the seniority list had been employed. As such, they have no position on a priority list.

Q. There is just a possibility of re-employment if it was available?

A. That is right and I might mention this, too, for the purpose of both lists, that we were concerned and the employees were concerned with not just working there but how long they would work here. Whether they would be called first and they would [39] be there and stay to the end.

Our operation reaches the peak some time in No-



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

vember or December and at that time, there was ample employment for everybody. We are generally seeking employees to go to work, but then after the first of the year, specifically in packing, we normally get down to one crew and that one crew will work, depending upon how many dates we have and what type of season it is, but they will work up until May.

They may be off for a couple of weeks in between, but when we start out again in December, and maybe it will be two or three days before the dates come in, we will be working on carry-over fruit and both this priority list and the seniority list permits a person, gives us an orderly manner of deciding who will be the people to come in first and stay to the end.

And that in packing specifically is what the girls were working for. They knew that the work was there and while there was ample work, they didn't mind, because they didn't need any priority or seniority list at that time because they knew that Cal-Date had ample jobs, but they worked to get themselves into a position where they would come to work first and stay to the last, and in that case I am referring to a small nucleus of people, not two or three hundred people, who were working in the season.

I am referring to the packing specifically. In one line maybe there is twenty to twenty-five people grading in grading [40] itself.



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

The grading is a little different because the grading operation starts in September on a pretty good level and within a week or so, we generally issue the seniority list and we stay at that level and then it comes to an abrupt close at the end, and so I think both lists were more important in the grading department than maybe for the women than any other people in the plant, because of the fact that one crew would work over a long period of time.

In fact, in 1952, one crew worked practically the whole twelve months.

Hearing Officer: Do you mean in grading?

The Witness: No, I mean in packing.

\* \* \*

### Cross-Examination

By Mr. Janosco:

Q. You testified here that prior to 1952, you had a priority list for people who worked because of special circumstances; is that correct?

A. Pardon?

Q. Because of special circumstances dealing with their employment, such as one or two days in a week or three days a week?

A. They fitted themselves into the condition that existed in [41] the industry and were willing to work with those conditions.

Q. In that type of a situation where the worker only worked five hours a day say three days a week, what happened to him when you went on a forty-

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

hour week basis or a forty-eight-hour week basis; did he work for you just three days a week?

A. Oh, no, they would—you see, we may get an order for two thousand cases of dates and we have only got two hundred packs and we don't want to build up large stocks, so that we will——

Q. Let me clarify it.

You stated that you hired people during the 1952 season for three days a week; is that correct?

A. We did not hire them for three days a week. We may have an occasion where employment will only last—we are discussing now the time at the end of the season, times like now?

Well, we get a special order and we need them to come in and work for three days and that would be all. They are not hired on a continual basis just to work three days a week.

Q. You testified also that you hired workers who preferred to work nights only; is that correct?

A. I don't think I testified to that.

Q. Well, will you please explain what that priority list was then?

A. It was a list of people who were willing to work nights when we had night work, who were willing to come in at the end [42] of the season and work for us just maybe for three days when that was all the work we had.

They were willing to come in maybe in May, when it was very hot and work under those conditions. They were willing to—if we had something special,

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

to come in and work there for just four or five hours in a day.

They would become machine operators, had they obtained the skill. They would become box machine operators or they would become a forelady and it was the list that determined who these twenty-five people would be.

Q. Can you identify any of these people at the present time who were hired on that particular basis?

A. Well, it varied from year to year. I am talking about 1952.

Q. Can you identify any of these people that were hired on that basis you talk about?

A. In 1952?

Q. In 1952. A. Yes.

Q. Will you please list their names?

A. Well, I would have to go to records for it.

Q. Are any of these on the present seniority 1953 list? A. Oh, yes. [43]

\* \* \*

Mr. Janosco: It appears that all the people who were on the priority list are on the regular seniority list for 1952 and 1953.

Hearing Officer: Thank you.

The Witness: With the exception of—

Mr. Janosco: —those you have quit or who have been discharged for just cause.

The Witness: I might add—you mention about

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

part time, but they were not hired for part-time work. They were hired to work through the normal season, but at the end of the season, it only lasted three days and they were willing to come in and work that time.

Q. (By Mr. Janosco): Well, then it is true that the workers were hired to work the regular scheduled work of the plant and not for any specific reasons such as hot weather or because of [45] short hours or because there was night work, but because it was the regular operation in the plant; is that not right?

A. Are you referring to the people on this priority list?

Q. On the priority list as well as the seniority list.

A. They were hired to work when the plant was working.

Q. On your regular scheduled hours?

A. Whether it was night work or three days a week or four days a week.

Hearing Officer: I think the question is: Was there any special arrangement made with individual employees?

For instance, when a girl makes an arrangement with her supervisor, and says, "I am only going to work Tuesday or Wednesday nights"?

The Witness: That is right.

Hearing Officer: I am sorry.

Q. (By Mr. Janesco): You spoke of a seniority

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

list for the packers and for the graders; is that two separate lists?           A. Yes.

Q. How many separate seniority lists have you for the plant?

A. The contract calls for graders, packers and men.

Q. Were the men divided between the mechanical department and the workers who were working on production?

A. The men were on job classifications, not on a department basis.

Q. On job classifications? [46]           A. Yes.

Q. For example, could a carpenter exercise his seniority to go into the plant and operate a machine?

A. If he is capable. If he had that classification, yes.

Q. Could a machine operator exercise his seniority to apply for a job if it became open in the mechanical department?

A. Well, the maintenance department is separate.

Q. A separate list for that?           A. Yes.

Q. Actually, you had a separate list for the maintenance department?           A. Yes.

Q. And the men working in the production department?           A. Yes.

Q. Explain how the seniority worked regarding day shift operation and night shift operation?

A. There was no division. [47]



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

\* \* \*

Q. Do you know of anyone in the company, in a supervisory capacity, who may have advised someone to ask workers on the day shift to transfer to the night shift? A. Yes.

Q. Do you know people? A. Yes.

Q. Who?

A. Well, Mr. Yowell, that would be under his jurisdiction.

Q. He would go to the plant and request people?

A. I don't know if he did but he would be the person who would know. Back prior to the 1953 season, I am sure people would be asked to work nights and who wanted to work nights.

Q. Did you ever discharge or fire anyone or lay anyone off because they refused to go on night shift during the 1951 or 1952 season?

A. We laid them off before the people were willing to work at nights.

Q. Who refused to work nights?

A. I said we laid them off prior to the time that the people who were willing to work nights.

Q. You laid off people—I am asking this question. Did you ever lay anybody off or fire anybody during the 1952 or 1951 season, who refused to go on the night shift? [51]

A. At the time they were asked?

Q. At the time they were asked? A. No.

Q. Did you ever call any of these people back

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

to work the following year if they refused to go on a night shift?

A. We may have, yes. May I say something?

Hearing Officer: I suggest that if you want to volunteer something, you should go over and ask your counsel first.

The Witness: No, I wanted to ask you whether regarding this question, whether I can elaborate on it just now or should I wait until Mr. Janosco is finished before I elaborate on the situation?

Hearing Officer: You can answer the questions just as fully or as simply as you wish.

If you don't understand the question, just say so, and if it goes back to a period before you have any actual knowledge, it would be a good idea to remind us of that fact.

Now, that reminds me; when did you obtain your present position?

The Witness: May of 1951.

I wish to point out then, Mr. Janosco, that a person who wasn't willing to work nights, wasn't willing to work shorter weeks, wasn't willing to work during the hot weather, that that person wasn't laid off or fired because of it but they were the last hired and the first to be laid off. [52]

\* \* \*

Q. (By Mr. Janosco): I understand that you testified that in the past, if workers refused to go on the night shift, they were not fired.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

However, if they were not called back, at least, they were not called back as early the next season, is that correct?

A. That is correct. They were dropped from the priority list.

Q. When did you institute the policy of firing people for refusing night shift?

Mr. Babbage: I will object to the question. It is assuming a fact not in evidence because it has not been testified to in that way.

I think it is confusing the issues here by saying that, or by stating that they have instituted the policy of firing people when the processes by which the hiring and the seniority [58] list operates, has been described in some detail.

Hearing Officer: I will ask the witness to do the best he can with the question.

If he never fired anybody or if there is no such policy, he can so state.

The Witness: In January of 1954——

Mr. Janosco: That was——

The Witness: Wait now. In January of 1954, when we put on the night shift——

Mr. Janosco: That was after the strike.

The Witness: ——and we called the people on the seniority list, when they refused to come back to work, we said that they had lost their seniority and they had quit. We did not fire them. [59]

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

Recross-Examination

By Mr. Janosco:

Q. After the strike this year when it was agreed to call these people back to work, can you tell me what they were told when they came back and applied for work? A. Well—

Hearing Officer: First of all, did you give any instructions as to what applicants should be told?

The Witness: I told their plant manager to put on a night shift. We discussed it with Mr. Helbling. Mr. Babbage [67] discussed it with Mr. Helbling and Mr. Moorehead representing the union. I think it was in Mr. Helbling's office in Los Angeles.

We told him we were going to put on a night shift and we were going to call the people back following the seniority list.

To the best of my knowledge, the people were all contacted, told there was a night shift being put on and told them when it was going to be and asked them to come to work.

Q. (By Mr. Janosco): Isn't it true that when they applied for jobs, that they were advised that their seniority would begin as of that date?

A. That I don't know.

Q. Isn't it also true that they were also advised that they would start at fifteen cents an hour less than they had been receiving before?

A. They were hired back to the jobs available and the pay for those particular jobs. They may have been working on these jobs before.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

Q. Isn't it true that they were starting as new employees with a fifteen-cent-an-hour cut in wages?

A. They were hired back. There was no question raised to the best of my knowledge, which said that they were new employees or that they were not. They were told there was a job and they were asked to come back to work. [68]

The same thing is true in the grading department: when some nine or ten girls were hired back into the jobs that were available.

It so happened there that these jobs were the same jobs as they had been at before and they were hired back in the same rate because they were going back to the same jobs.

Q. In other words, the workers were not advised that they were losing seniority or that they were not taking a cut in wages?

A. No, actually, with regard to the seniority to the best of my knowledge, they were not advised—you said losing seniority——?

Q. Starting as new employees and losing their seniority also?

A. As far as I know, they were not advised of that and I gave no instructions to that effect. Regarding the pay, they were hired back at the pay of the job they were hired back to.

For instance, if a fork truck operator was hired and paid a certain amount of wages, if he was taken back as a dumper, he would be paid as that. [69]



General Counsel's Exhibit No. 2-KK—(Continued)

BERYL WARREN

a witness called by and on behalf of the Union,  
being first duly sworn was examined and testified  
as follows: [73]

Direct Examination

By Mr. Janosco:

Q. Will you tell us who you are employed by?

A. The Cal-Dates.

Q. When did you start working for Cal-Dates?

A. The fall of 1946. [74]

Q. In what department did you work?

A. Packing.

Q. What were your duties in the packing department?

A. You mean all the time, or——

Q. 1946. A. I was a weigher.

Q. Is that all you did during the year 1946?

A. Well, I packed candy and mostly that, yes.

Q. How long did you work for the company?

A. In 1946?

Q. From 1946 or for how long?

A. Every season.

Q. What part of the season did you work—did you usually start to work; the beginning of the season, the middle or what part?

A. In 1946 and 1947, I think I started around the 1st of November and the rest of the years I started in when the season started.

Q. How long did you work during the season?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Beryl Warren.)

A. In 1946 to 1947, the line I was working on was laid off and I was automatically laid off and the rest of the time I worked until the season was over with.

Q. Did you do any other type of work besides packing?      A. Yes, I was a forelady.

Q. When did you become a forelady? [75]

A. 1951.

Q. 1951?      A. Yes.

Q. Were you a forelady in the 1952 and 1953 season?      A. Yes.

Q. Were you a forelady at the time the strike occurred?      A. That is right.

Q. What were your duties as a floorlady or forelady?

A. I supervised the line that I was assigned to.

Q. During the time that you were a forelady, were you ever requested to go on night work?

A. When I became a forelady, that was the way I got to be a forelady. I was promoted to be forelady but they were putting a night shift on and the supervisor said if I wanted to go on night shift, I could be a forelady right away.

Q. When was that?      A. 1951.

Q. The following year?

A. I was forelady on the day shift and they needed a supervisor on the night shift and they asked me if I would be a supervisor on the night shift over the whole packing.

Q. Did you go?      A. I did.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Beryl Warren.)

Q. As a supervisor, did you ever request anyone to go on night shift work? [76]

A. I was on night shift at the time.

Q. Well, when you were working on day shift?

A. Yes, we were given instructions to ask our workers if they wanted to go on night shift.

Q. Did any of the employees that you asked to go on night work, go on night work?

A. Two women went in 1953.

Q. Did any of the employees refuse to go on night work?

A. All the rest of them said that they wanted to stay on day shift.

Q. Were these employees called back the following year at the beginning of the season but refused?

A. Pardon?

Q. The employees that refused to go on night work, were they called back according to seniority?

A. Yes.

Q. Was any one penalized for refusing to go on night shift?           A. No.

Q. Was there a policy established that workers would be, if they didn't go on night shift?

A. There wasn't.

Q. Were you ever told by your supervisor to tell your workers that if they refused to go on night work, they would be penalized?

A. No, I was never told that. [77]

Q. Are you working for Cal-Dates now?

A. No.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Beryl Warren.)

Q. What was the last time you worked for the Cal-Dates?

A. The day we went on strike in December.

Q. Did you apply for a job after the strike?

A. Yes.

Q. What was told to you?

A. They called me to come to work on the night shift and the personnel girl called me to work and said they wanted me to come on the night shift and I asked if there was any day work to be had, and she said no, we would have to go on the night shift and I said I would go in and interview them.

Q. What happened when you came in for an interview?

A. We came in and we were told to wait until Mr. Yowell came back from lunch and when he interviewed us, he told us they were calling a night shift in to work for approximately four weeks to get this pack out that they had for the Lenten Season.

And that, when the pack was finished, we would be through until the following fall.

Q. What did you say?

A. I asked him about seniority and he said that our seniority would start the day we started on the line, the night we came in to work, that there was no more seniority.

Q. Did he say anything about wages to you?

A. Yes, he said we would go back to work on the

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Beryl Warren.)

line. We would not have our regular job, that we had when the strike was called.

Q. Are you willing to go back to work now?

A. Yes, if it is day shift work.

Q. In all the time that you worked for the Cal-Date Company, did you know of, or ever had any reason to believe that the company discharged or demoted anyone for refusing to take a night shift job?

A. Not to my knowledge, no. [79]

\* \* \*

### Redirect Examination

By Mr. Janosco:

Q. During that period when it was hot [84] weather and you were only working two or three days a week, were there many people that were directly working under you, who did not work some of these days?

A. You mean, the ones that were on the seniority—

Q. The ones that were on the seniority list or were not on the seniority list.

A. There were several.

Q. There were some people that did not come to work?

A. There were.

Q. Were those people penalized in any way for refusing to work?

A. No.

Q. Were they notified by the company or by any-



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Beryl Warren.)

one in responsibility that they would be penalized if they refused to work on those days?

A. Not to my knowledge. [85]

\* \* \*

### Redirect Examination

By Mr. Janosco:

Q. When your particular shift needed more workers, who requested more help?

A. The supervisor on the day shift requested it and when I [86] was on the night shift as supervisor, I told the personnel department if I was short of help and that I needed girls.

Q. When any of those—strike that.

Were any orders—when any orders were issued to the workers, working underneath you, did they come directly to you or by some supervisor, going over your head and issuing the orders?

A. Well, what orders do you mean?

Q. Well, suppose you needed workers on the night shift, how was that handled?

You would ask these people to go on the night shift?

A. This past year, in 1953, I was told by my supervisor to go and ask the girls on my line if they wanted to go on the night shift.

Q. And if you needed more help in your department because they could not keep up, how did you get more help?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Beryl Warren.)

A. I went to my supervisor.

Q. You requested it from your supervisor?

A. Yes. [87]

\* \* \*

CATHERINE M. WHITE

a witness called by and on behalf of the Union,  
being first duly sworn, was examined and testified  
as follows:

Direct Examination

\* \* \*

By Mr. Janosco:

Q. Please tell us when you started to work for  
the Cal-Date Growers' Association? A. 1943.

Q. 1943? A. Yes.

Q. How long have you worked for the Cal-Date?

A. Almost eleven years.

Q. From 1943 through 1953?

A. That is right.

Q. Did you work there prior to the strike?

A. Yes.

Q. Did you go on strike? A. Yes.

Mr. Babbage: I didn't hear the answer to that  
question.

The Witness: Yes.

Q. (By Mr. Janosco): In 1944, when you  
started to work for Cal-Date, what date did you  
start? A. 1944.

Q. Was it 1944 when you started?

A. 1943. [89]

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Catherine M. White.)

Q. What did you start in? A. Packing.

Q. Packing? A. Yes.

Q. What departments have you worked in since that time?

A. Well, in 1943 I started in the packing as a worker's weigher and in 1944, I was a grader. I graded all the year. In the next year, I was a weigher and from then on I was a machine operator until 1951, when I was a forelady.

Q. In 1951, you became a forelady?

A. Yes.

Q. Now, during that period, were you ever asked to go on night work? A. Yes.

Q. Did you ever go? A. Yes.

Q. What years? A. 1951 and 1952.

Q. Who asked you to go on night work during that period? A. The supervisor.

Q. How did the supervisor get people to go on night work?

A. Well, they asked the girls that worked on the day shift, if they could work nights.

Q. They asked the girls in the day time if they wanted to work nights? [90] A. Yes.

Q. Did any of the other girls that you know refuse to work nights? A. Yes.

Q. Were they penalized in any way for refusing night work? A. No.

Q. Now, in 1951 and 1952 you became a forelady? A. Yes.

Q. Were you a forelady during the day shift?

General Counsel's Exhibit No. 2-KK—(Continued)  
[Testimony of Catherine M. White.]

A. I started on the day shift as forelady and then they asked me to go on night which I did.

Q. What year did you go on nights?

A. 1951.

Q. Nights in 1951? A. Yes.

Q. Did you work at nights during the 1952 and 1953 season? A. Yes.

Q. As a forelady? A. Yes.

Q. As a forelady, did you ever ask any of the people working under you to go on nights?

A. Yes.

Q. Did you ask the workers to go on nights?

A. Yes.

Q. Well, who asked you to ask these workers?

A. My supervisor.

Q. Did any of them refuse to go on nights?

A. Yes.

Q. Were they penalized in any way?

A. No.

Q. Were you advised by anybody above you to tell these workers that they would be penalized for not going, or if they refused night work?

A. No.

Q. Did you apply for work after the strike?

A. Yes.

Q. Who did you go to, and who did you talk to?

A. Well, I signed the availability slip.

Q. Did you talk to anyone in person?

A. No, I talked to Fay over the phone.

Q. Fay, that is the—— A. Supervisor.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Catherine M. White.)

Q. What did she say?

Hearing Officer: Could we have Fay's full name?

Mr. Babbage: Gillespie.

Q. (By Mr. Janosco): What did she say over the phone?

A. She called me and wanted me to go back to work on the night shift and she gave me to understand that I had no more seniority.

Q. That you had no more seniority? [92]

A. Yes, she said the day shift had preference because they had started in and worked so they had no seniority either.

Q. Did you accept any night work then?

A. No, I did not.

Mr. Babbage: What was the answer?

The Witness: No.

Q. (By Mr. Janosco): Were you advised that you would be penalized if you refused any night work? A. No.

Q. Did they offer to call you back next fall when the season opens up again?

A. Well, I do not think there was much said about it.

Mr. Babbage: I didn't hear the answer.

Hearing Officer: Would you read the answer, Miss Reporter?

(Answer read.)

Q. (By Mr. Janosco): Are you willing to go back to work for Cal-Date? A. Yes. [93]



General Counsel's Exhibit No. 2-KK—(Continued)

ELLEN CHESTER

a witness called by and on behalf of the Union,  
being first duly sworn, was examined and testified  
as follows:

Direct Examination

\* \* \*

By Mr. Janosco:

Q. Mrs. Chester, did you work for the Cal-Date  
Company?           A. Yes, sir.

Q. When did you start working there?

A. Pardon?

Q. When did you start working for them? [100]

A. In the fall. I don't know the exact year but  
in the fall when Japan declared war on the United  
States.

Mr. Janosco: 1941.

Hearing Officer: 1940, wasn't it?

Mr. Janosco: Pearl Harbor was 1941.

The Witness: I was working when that hap-  
pened.

Q. (By Mr. Janosco): Have you worked for  
the Cal-Date Company continuously?

A. Not continuously.

Q. Did you have seniority established before the  
strike was called?           A. Yes, sir.

Q. This last December?           A. Yes.

Q. What did you work at?

A. In the packing room.

Q. Did you get—

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Ellen Chester.)

A. You mean what did I work at, at the time of the strike?

Q. Yes. A. In the packing room.

Q. During the time when you worked for the company, were you ever asked to go on nights?

A. Yes.

Q. Did you go on nights?

A. Some years, yes. [101]

Q. The years that you did not go on at nights, were you ever penalized for it?

A. Not that I know of.

Q. Are you working for the Cal-Date now?

A. No, sir.

Q. Did you go back after the strike?

A. No, sir.

Q. Did you apply for a job after the strike?

A. I signed the availability slip.

Q. What happened after you signed that slip?

A. How do you mean?

Q. Did you talk to anyone about your job? Did you request anyone for re-employment?

A. No.

Q. Did the company offer you your job back?

A. They called me back in January to go on night shift.

Q. What did you do?

A. At that time, I did not have immediate transportation as my husband had our only car that was in operation at the time, and he was out on a service call, and I had to get in touch with him before I

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Ellen Chester.)

could say whether or not I had a way in.

And I could not come in for that night and I was told to come back in the next day.

Q. Did you go back the next day?

A. I did. [102]

Q. What did they tell you?

A. That my job was taken. I had a way of coming in then.

Q. You had a way of coming in then?

A. Yes.

Q. And your job was taken? A. Yes.

Q. Did they offer you another job?

A. No.

Q. What did they tell you about seniority; was it still there?

Mr. Babbage: I object to the question because it is leading.

Hearing Officer: Ask her who she talked to and what was said.

Q. (By Mr. Janosco): Who did you talk to about coming back or not, on that day?

A. To Florence Hawkins.

Q. What did she say?

A. She said she was sorry my place was filled.

Q. Did you apply after that date?

A. No, sir. I didn't see no reason to.

Q. Are you willing to go back to work for the company now? A. Yes, sir. [103]

General Counsel's Exhibit No. 2-KK—(Continued)

MAYME RUBY

a witness called by and on behalf of the Union,  
being first duly sworn, was examined and testified  
as follows:

Direct Examination

\* \* \*

By Mr. Janosco:

Q. When did you start working for the Cal-Date  
Association? A. 1943.

Q. Have you worked for them ever since then?  
A. Yes.

Q. What department did you work in?  
A. Packing.

Q. Did you ever work nights?  
A. No, I haven't. [105]

Q. Were you ever asked to work on a night  
shift?

A. Yes, they asked me to if I wanted to, but it  
wasn't necessary.

Q. Were you ever penalized in any way for re-  
fusing any night work? A. No.

Q. Were you working here during the strike?  
A. Yes.

Q. Before the strike? A. Yes, sir.

Q. Did you apply for re-employment after the  
strike? A. No.

Q. Did you sign an availability list for work?  
A. Yes.

Q. Were you called back? A. Yes.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Mayme Ruby.)

Q. Did anyone call you to come back to work?

A. Yes.

Q. Who called you?

A. Here, from the office.

Q. Do you know who it was?

A. I was sick at the time with a bad cold and could not work, and normally I never did refuse to work, but when I got better so that I was able to work then, they did not have a place for me. [106]

Q. What did they tell you when you said you could not come to work?      A. Pardon me?

Q. What did they tell you when you said you couldn't come back to work?

A. They said they didn't have a place for me when I called.

Q. Are you willing to go back to work now?

A. Yes, I could.

Mr. Janosco: That is all. [107]

\* \* \*

### LUPE QUIJADES

a witness called by and on behalf of the Union, being first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \*

By Mr. Janosco:

Q. How long have you worked for the Cal-Date Association?      A. Three years.



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Lupe Quijades.)

Q. What type of work did you do?

A. I weighed and I packed. I never stayed in one place. [110]

Q. You packed and weighed?

A. Yes. They moved me around.

Q. Did you ever work nights? A. No.

Q. Were you ever asked to work nights?

A. Yes.

Q. Were you ever penalized for refusing to work nights? A. No.

Q. Did you work here prior to the strike?

A. Yes.

Q. After the strike, did you apply for reinstatement?

A. Only when we signed those availability slips.

Q. Those availability slips? A. Yes.

Q. What did they tell you then?

A. Nothing. Afterwards I was called and I couldn't come and work.

Q. You were called to come to work?

A. Yes.

Q. By whom? A. By Florence.

Q. Why didn't you come back to work?

A. Well, I did not tell her exactly. That day I had a miscarriage when they wanted me to come back and I had a miscarriage. [111]

Q. Were you sick? A. Yes.

Q. Did you get a doctor's certificate?

A. Yes, he said he would give me one if I needed one.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Lupe Quijades.)

Q. Did you have an operation?

Mr. Babbage: I object to this line of questioning.

Mr. Janosco: Did I say——

The Witness: I had to go to Arizona that day that I was called to work.

Hearing Officer: The only part that is relevant here is what Florence said to her and what she said to Florence.

Q. (By Mr. Janosco): Why didn't you tell Florence you couldn't go to work?

Mr. Babbage: Now——

Q. (By Mr. Janosco): What did you tell Florence?

A. I told her I could not work nights. I didn't tell her exactly why, but I told her I was in the doctor's care.

Q. You were sick though?

A. Yes, I was.

\* \* \*

Q. (By Mr. Janosco): Are you willing to go back to work for [112] Cal-Dates now?

A. Yes. [113]

\* \* \*

General Counsel's Exhibit No. 2-KK—(Continued)

FLORENCE HAWKINS

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \*

Hearing Officer: Please mark this Board's Exhibit No. 6 for identification.

(Thereupon, the document above referred to was marked Board's Exhibit No. 6 for identification.)

Hearing Officer: This is a statement of Florence Hawkins dated the 9th day of March, 1954, taken by Mr. Irving Helbling.

Q. (By Hearing Officer): Is that the statement you made to [116] him? A. That is correct.

Q. Have you read that statement today?

A. No.

\* \* \*

Q. (By Mr. Babbage): What is your occupation with the Date Growers' Association, Miss Hawkins?

A. Well, primarily I was distribution clerk. I was hired with the title of distribution clerk but starting this season, I took over the personnel work so I guess for this season, I have been both distribution clerk and payroll personnel

Q. In this personnel work, is it your responsibility to notify people when there is a shift beginning?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

A. That is correct.

Q. Did you notify the people who were to work at the beginning of the season in 1953?

A. Yes, I did.

Q. And how did you notify them?

A. I am told how many they wanted called in and then I go [117] down the seniority list and call them in.

Q. And do you go completely through the seniority list at the beginning of the season in 1953?

A. Yes.

Q. You did? A. Yes.

Q. And what did you do after you had completed the seniority list?

A. Then we use the new applications.

Q. When was the first night shift started in the 1953 season?

A. About the middle of October. I am not sure as to the date.

Q. Well, was it prior to the first of the year?

A. Yes.

Q. And how did you call the people for that shift? A. Well, just applications generally.

Q. How were you notified that there was to be a night shift?

A. Mr. Yowell would tell me. In this case, I think it was Mr. Yowell. It would either be Mr. Yowell or Fay Gillespie.

Q. Did he tell you how many employees it should be? A. Yes, he generally did.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

Q. Do you recall how many he told you for that occasion?      A. Not offhand.

Q. Did you have any discussion with Fay Gillespie at that time with respect to any girls transferring from the day shift [118] to the night shift?

A. I was notified at the time to call them in, that there were two of them who were transferred from the day to the night.

Q. Do you recall the circumstances of the night shift of January 16th, 1954?

A. Yes, I was told about that.

Q. Who told you about that?

A. Mr. Yowell.

Q. Did he tell you how many employees you would need?      A. Yes, seventeen.

Q. How many did he tell you?

A. I think it was around seventeen.

Q. On what basis did you notify employees for that shift?

In other words——

A. I went right down the seniority list.

Q. Was that the same seniority list that had been used in hiring the personnel from the beginning of the 1953 season?      A. That is correct,

Q. And the people on that list who were not employed were people who had been out on strike?

A. Yes.

Q. And you made no deviation among them?

A. I went right down the list.

Q. Did you have any conversation with any of



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

the people that [119] you called regarding their seniority?

\* A. I cannot recall a single time when we discussed seniority.

Mr. Babbage: Excuse me. May I see the statement of Catherine White, please?

Q. (By Mr. Babbage): Do you know Catherine White? A. Yes.

Q. Was she one of the employees whom you called? A. Yes.

Q. Catherine White signed a statement in which appears: "On January 16, Florence of the personnel office called me and asked if I was available for the night shift."

Did you do that? A. Yes, I did.

Q. Then, the statement goes on to say: "I asked if I could work days."

Did she ask that? A. I think she did.

Q. "She said there wasn't any day work and told me to let her know."

Do you recall that?

A. Well, she was uncertain at the time as to whether she could accept the night work due to certain circumstances concerning the family and she was to call me back.

Q. It goes on to say, "I told her that I didn't want night shift work as she said I was to be a machine operator on the [120] night shift and also that the day shift employees had more seniority than I did."

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

A. No. In the first place, I never know what they are going to do out there because that isn't my job to know, so I would not have discussed other than that she was coming in, to my mind, or that she was to come in.

And, as I say, to my knowledge, she did not discuss seniority. We didn't discuss seniority. Her reasons that she gave me for not working the night shift had nothing to do with seniority.

As far as I understood, it was due to a family condition, and I don't recall anything about seniority being discussed. [121]

\* \* \*

#### Cross-Examination

By Mr. Janosco:

Q. You are the personnel person for the company?      A. That is correct.

Q. As the personnel representative, what are your duties?

A. Oh, I take applications and when they are hired, I make out the social security sheet and keep a record of that in a folder, and I call them in for work. I guess that is about the extent of it.

Q. Do you keep track of seniority lists?

A. I have done so, yes.

Q. Are you advised by the company to see to it that people are called according to seniority and placed on jobs according to seniority?

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

A. That is what I was instructed to do when I took over my position in personnel.

Q. Well, why weren't the people placed on their proper [122] seniority list when they went back to work after the strike?

Mr. Babbage: I object to that question. It is asking for a conclusion of the witness.

Hearing Officer: That may all be true but if the witness understands the question, she may answer it in her own way.

The Witness: Well, as far as I was concerned, I went right down the seniority list. They were never removed from it, and I went right down the list.

Q. (By Mr. Janosco): Why didn't you place these people on the day shift according to their seniority?      A. Pardon?

Q. Why didn't you place these people on the day shift according to their seniority?

A. Well, I called them in the order of seniority but I had never been advised what their status was. I had never made any change. I wasn't told where to place them. They had gone out from work and when they were called back in again, well, they came back in the order of seniority. No new list was ever made. [123]

\* \* \*

Q. Did you advise anyone on that seniority list if they refused night work, that they would lose

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

their seniority?           A. No, sir.

Q. Was there any notices of that type put on the bulletin board of the plant?

A. No, not to my knowledge.

Q. Was that a company policy?

A. That I couldn't say. [125]

\* \* \*

Q. Now, when you went down this seniority list on January 16th, do you recall approximately how many people you called on the list?

A. I think I filled seventeen jobs.

Q. You filled seventeen jobs? And it seems——

A. I filled seventeen jobs and I think that I called between twenty and twenty-five or more.

Q. And when you got a reply that an individual wasn't interested, did you check them off?

A. Yes. Sometimes I do not always get them the first time. I generally leave a message and then they call me back. I try, wherever possible, to talk to the person direct but several of them had to call me back. I had left the message and they would call me back because I have made it a policy to do that.

Q. Were all these sixteen jobs filled from the seniority [126] list? I mean the seniority list which was established in connection with the union contract?

A. Oh, I would say that they must have been on it, I think.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of Florence Hawkins.)

Q. That is the list that Mr. Yowell handed to you?  
A. Yes. [127]

\* \* \*

JAMES F. WRIGHT

a witness recalled by and on behalf of the Employer, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Babbage:

Q. Directing your attention to the period after the termination of the strike in December, would you state whether or not any employees were employed after that date and prior to January 16, 1954?

A. Yes, we employed nine graders in the grading department.

Q. Were there any packers employed?

A. Not until we put on the night shift.

Q. Were those graders employed from the seniority list?  
A. Yes, sir. [128]

\* \* \*

Q. What is the company's position with respect to these employees who refused to accept work on the night shift on January 16th, 1954?

Are they still on the seniority list or will they have an opportunity to work again for the company?



General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

A. When we start operation—our feeling on it—we will call back the people who worked on the night shift. We will continue to call the people on the list. When we exhaust that list, we will again offer these twelve people employment if they desire it. [132]

\* \* \*

A. As I remember it, that is right.

Q. Would you state what it was?

A. Well, they asked about the day work and I said that the day crew was filled up and we were putting on a new type of Easter package which we were packing and we would have to work it at nights because of the equipment we had and the night job was the only one available.

And, too, that due to the reduced operation, we would not have the supervisors and the number of machine operators' jobs that we had had available, but I think I told them the machine operators' jobs that were available for those girls that had the experience, and that those girls that would have the experience in that, would have the job.

And then, they asked about the seniority and what that meant and I said, "Well, it would start when they started to work."

Q. Was this before or after she told you that she would not take the night shift?

A. Well, this was in the course of discussing the work.

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

Q. And had she told you whether or not she would accept the night shift?

A. Not yet. I think we discussed all these points before she arrived at a decision or an answer.

Q. Would you state also, was there anything further said about seniority at that time? [137]

A. Not to my knowledge. Just that one point. We didn't go into detail on it.

Mr. Babbage: May I have the statement of Mrs. Warren?

Q. (By Mr. Babbage): I am reading from a statement which was signed by Mrs. Beryl Warren in which she said she discussed having come to the plant office and talked to Florence and Florence having told her that there was no day shift work available.

Then, she goes on to say, "I then went to the plant and talked to Mr. Yowell. He said I would have to work on the line. That there was about four weeks work and that would be all. I asked him if I could get day shift work when the night work was over. He said no because the day girls had seniority and I would have to wait until I was called."

Is that a correct statement of what you said at that time?

A. Well, I don't remember whether I used the word "seniority" at that time or not. I know we discussed the fact that the day crew was already established and as we had no other day crew work,

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

the night work was the only work available and the girls that were working here, were the ones that were given first choice.

Q. She goes on to say: "I told him I didn't want night work and he wouldn't respect me if I did. He said my seniority would start from the time I next came to work." [138]

Q. Did you say that to her after she refused to accept night work or before?

A. I think those were about our parting words as she backed out of the parking lot.

Q. Did you have a discussion with any other employees about seniority, Mr. Yowell?

A. Pauline Skinner was with Beryl Warren at the same time.

Q. Was there anyone else? A. No.

Mr. Babbage: That is all. [139]

#### Cross-Examination

\* \* \*

By Mr. Janosco:

Q. Did you instruct any of the people who are under you in supervision, to advise the people that they would lose their seniority if they refused to come back to work on a night shift?

A. The only person I talked to was Florence Hawkins in procuring the help.

Q. Were any orders given to notify the people

General Counsel's Exhibit No. 2-KK—(Continued)  
(Testimony of James F. Wright.)

that if they refused night work they would lose their seniority?

A. No, the orders I gave to Florence were to call the people in accordance with the seniority list and those that she could contact, to have them report to the personnel office and then make contact with me and I would tell them what their position was. [140]

That there was a night shift and the reason why and the duration because it has been our practice in the past that our employees had a pretty good idea of what the work was going to be and how long it would last. Some of them like to know that. [141]

\* \* \*

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## GENERAL COUNSEL'S EXHIBIT No. 2-UU

[Title of Board and Cause.]

### NOTICE TO SHOW CAUSE

On December 9, 1953, California Date Growers Association of Indio, California, filed a petition for certification in the above-entitled matter pursuant to Section 9 (a) of the National Labor Relations Act.

Thereafter, on September 20, 1954, District #5, United Packinghouse Workers of America, CIO,

acting for and on behalf of its Local No. 78, filed a motion with the undersigned to correct name of the Union by substituting the name "United Packinghouse Workers of America, Local 78, CIO" in place and stead of "United Fresh Fruit & Vegetable Workers LIU #78, CIO" in all documents relating to this proceeding. Copies of said motion were served on all parties.

Notice Is Hereby Given that unless sufficient cause to the contrary be shown in writing, filed with the undersigned in Los Angeles, on or before October 4, 1954, (with affidavit of due service of copies upon the parties to this proceeding), the undersigned will grant the aforesaid motion by substituting the name "United Packinghouse Workers of America, Local 78, CIO," in place and stead of the name "United Fresh Fruit & Vegetable Workers LIU #78, CIO," therein.

Dated, Los Angeles, California, September 22, 1954.

/s/ GEO. A. YAGER,  
Acting Regional Director, National Labor Relations  
Board, Twenty-First Region.

Admitted in evidence January 9, 1956.



GENERAL COUNSEL'S EXHIBIT No. 2-WW

[Title of Board and Cause.]

ORDER GRANTING MOTION

On September 22, 1954, the undersigned issued a Notice to Show Cause why he should not grant the Motion of District #5, United Packinghouse Workers of America, CIO, acting for and on behalf of its Local No. 78, requesting that its name be substituted in place and stead of "United Fresh Fruit & Vegetable Workers, LIU #78, CIO" in all documents relating to this proceeding, and no response having been filed thereto,

It Is Hereby Ordered that the said Motion be, and it hereby is, granted; and

It Is Further Ordered that the name "United Packinghouse Workers of America, Local 78, CIO" be, and it hereby is, substituted for the name "United Fresh Fruit & Vegetable Workers, LIU #78, CIO" in the aforesaid proceedings wherever it appears therein.

Dated at Los Angeles, California, this 4th day of October, 1954.

/s/ GEO. A. YAGER,

Acting Regional Director, National Labor Relations  
Board, Twenty-First Region.

Admitted in evidence January 9, 1956.

## GENERAL COUNSEL'S EXHIBIT No. 2-YY

[Title of Board and Cause.]

SUPPLEMENTAL REPORT  
ON CHALLENGES

On March 24, 1954, the Regional Director issued a Report on Challenges to the ballots of:

Carrillo, Manuela  
Chester, Ellen  
Dallosta, Lucretia  
Fieber, Lillian  
Flores, Florence  
Gagnon, Anna  
Quijadas, Lupe  
Romero, Socorro  
Ruby, Mayme  
Skinner, Pauline  
Warren, Beryl  
White, Catherine

Thereafter the Employer filed objections to the Report on Challenges asserting that the Regional Director erroneously resolved the challenges. As it appeared that the objections to the Report on Challenges raised substantial and material issues, an order directing a hearing on challenges was issued. Pursuant thereto a hearing was held before George H. O'Brien, Hearing Officer, on April 29, 1954. During the hearing all parties were given the opportunity to examine and cross-examine witnesses and to present other evidence relevant to the in-

General Counsel's Exhibit No. 2-YY—(Continued) quiry. Thereafter, the Employer and the Petitioner filed briefs with the undersigned urging their respective positions.

The undersigned has carefully considered all of the evidence and the briefs of the parties. Upon the entire record the undersigned makes the following findings and determination:

The Employer's operations are seasonal. Prior to November, 1952, the Employer maintained a priority list of persons for employment in each season. The names of competent employees of the previous season comprised the list. They were offered employment during the new season. If an employee worked on the night shift or had been willing to work short weeks or during the hot weather, he was given a preferential place on the list. As a result he would be called to work sooner at the beginning of the next season, or he was retained longer at the end of the season. In addition, employees by accepting such work might secure the opportunity of receiving a better job.

In November of 1952, pursuant to an agreement with the petitioning Union, a seniority list was established which governed employment. They were called to work in the order in which their names appeared on the list.

Around the first of December, 1953, a strike occurred among the company's employees which terminated on or about December 8, 1953, when most

General Counsel's Exhibit No. 2-YY—(Continued)  
of the strikers unconditionally applied for reinstatement. They did so by registering for employment with the Company.

Each of the persons listed above who had cast a challenged ballot had status on the 1953 seniority list. Each was a striker and each unconditionally applied for reinstatement. At the time of the application for reinstatement there was insufficient work to permit recall of all the strikers. However, shortly thereafter, the Company re-employed, from the seniority list, seven to ten of the strikers for jobs on the day shift.

On January 16, 1954, the Company inaugurated a night shift which required the employment of approximately 17 persons. The Company offered this employment to the employees herein involved. Each of them declined this offer of employment for various personal reasons. Several of them asked about the possibility of employment on the day shift but were told no such employment was available. Because of the refusal of these employees to accept this night shift work, the Company contends that they have quit their employment and therefore were not eligible to cast ballots during the election. The Union, on the other hand, urges that employees were merely declining night shift work, which declination did not affect their status.

The record reveals that each season employees filled out new applications for employment. The applications contained a question as to whether the

General Counsel's Exhibit No. 2-YY—(Continued)

employee is willing to accept night shift work. Many employees answer this question either affirmatively or negatively, while others make no answer. On the record as a whole, the undersigned finds that each season at the beginning of the night shift supervisors offered night shift employment to employees on their crews. Many of the employees refused to accept work on the night shift. The employees were free to reject work on the night shift and were not penalized for such a rejection. Prior to the establishment of the seniority list, employees who accepted night work might have received preference in employment during the next season over those who had not done so, or they may have secured promotions to higher paying classifications or they may otherwise have benefited, but the evidence is clear that the employees who rejected night work suffered no loss of pay, declassifications or other penalty for such refusal and were not regarded as having quit. In addition, many of the employees stated in their applications that they would not accept night shift work. Because of their statement, they were not deprived of opportunity to work on the day shift.

The Agreement for Consent Election herein, approved February 5, 1954, makes provision for eligibility of voters. It provides, in part:

“Those eligible to vote shall be persons who were employed in the bargaining unit—during the last complete payroll period in January,



General Counsel's Exhibit No. 2-YY—(Continued)

1954, and including all persons whose names appear on the 1953 seniority list; but excluding any such persons who have been permanently replaced and those employees who have quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election.”

The record as a whole discloses that the Company does not claim that these employees were discharged so as to result in excluding them from eligibility to vote. The General Manager of the Company testified that the Company did not discharge them.

On the other hand, the Company takes the position that by refusing to accept night work, these employees “quit.”

In view of past practices, custom and the intent of the employees as revealed by the record as a whole, the undersigned can find no support for the position of the Company.

The record does not reveal any word or act on the part of any of these employees which establishes an intent to resign from and abandon their employment status. Rather, the record reveals that while rejecting the offer of night work some were simultaneously seeking day work.

The provisions of the Agreement for Consent Election are controlling here. If the employees on the seniority list neither were discharged nor quit,

General Counsel's Exhibit No. 2-YY—(Continued)  
they are eligible to vote. They were not discharged.  
They did not "quit."

Likewise, the undersigned finds no merit to the Company's contention that employees Mayme Ruby and Lupe Quijadas severed their employment since they did not report for work because of illness. They had failed to obtain leaves of absence. Neither of these employees was ever told that she was discharged. The record reveals no credible evidence that employees while laid off, with no real expectation of being recalled for a period of six or more months, are required to obtain leaves of absence or sick leave during such lay-off period.

Ruby began working for the Company in 1943. She was working when the strike began and went out on strike. After the termination of the strike she signed the availability list. Later, when called from the Company's office to return to work, she told them she was sick and not able to work. When she called back later and said she wanted to return to work, they told her not that she was discharged or had quit but that they then had no place for her.

Quijadas had worked for the Company 3 years. She went out on strike and, when it was terminated, signed the availability list. She, too, was ill when called to return to work. She told the Company she was under the doctor's care when requested to return to work.

The record as a whole reveals nothing in either the words or conduct of these employees or of the

General Counsel's Exhibit No. 2-YY—(Continued)  
Company which would substantiate a finding that  
either of these employees quit or was discharged.

It is the finding of the undersigned that the evidence, when considered as a whole, establishes that all of these employees were eligible to vote in the February 18, 1954, election, under the terms of the Agreement for Consent Election.

The undersigned overrules the challenges to the ballots of these 12 employees and directs that they be opened and counted, at the Twenty-First Regional Office of the National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California, Monday, October 11, 1954, at 2:00 p.m.

Dated at Los Angeles, California, this 5th day of October, 1954.

/s/ GEO. A. YAGER,  
Acting Regional Director, National Labor Relations  
Board, Twenty-First Region.

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-ZZ

October 5, 1954  
Prospect 4711, Sta. 838

Mr. John D. Babbage,  
Best, Best & Krieger,  
Evans Bldg.,  
Riverside, California.

Re: California Date Growers Association,  
Case No. 21-RM-280

Dear Mr. Babbage:

A conference is scheduled to be held in this office at 2:00 p.m., October 11, 1954, for the purpose of opening and counting the ballots of those persons found to be eligible by the Regional Director. I trust that this time is convenient to you.

We are sending a copy of this letter to the petitioning union to serve as its invitation to attend the conference.

Very truly yours,

IRVING HELBLING,  
Field Examiner.

cc: United Packinghouse Workers of  
America, CIO,  
1019 So. Grand Avenue,  
Los Angeles, California.

California Date Growers Association,  
Corner Highway 99 and King Street,  
Indio, California.

IH/ehm

Admitted in evidence January 9, 1956.

## GENERAL COUNSEL'S EXHIBIT No. 2-AAA

October 8, 1954

PProspect 4711, Sta. 838

Mr. John D. Babbage,  
Best, Best & Krieger,  
Evans Bldg.,  
Riverside, California.

Re: California Date Growers Association,  
Case No. 21-RM-280

Dear Mr. Babbage:

In accordance with our telephone conversation of yesterday, the conference scheduled in this matter has been postponed until 2:00 p.m. Tuesday, October 19, 1954.

Very truly yours,

IRVING HELBLING,  
Field Examiner.

cc: California Date Growers Ass'n.,  
Corner Highway 99 and King Street,  
Indio, California.

United Packinghouse Workers of  
America, CIO,  
1019 So. Grand Avenue,  
Los Angeles, California.

IH/ehm

Admitted in evidence January 9, 1956.



GENERAL COUNSEL'S EXHIBIT No. 2-BBB

Best, Best & Krieger  
Attorneys at Law  
Evans Building  
Riverside, California  
Telephone 598

October 13, 1954.

Special Delivery

Mr. Irving Helbling, Field Examiner,  
National Labor Relations Board,  
111 West 7th Street,  
Los Angeles 14, California.

Re: California Date Growers Association,  
Case No. 21-RM-280

Dear Mr. Helbling:

Since my conversation by telephone with you last week in which we arranged for a continuance to October 11, 1954, for the purpose of opening and counting the ballots, I have been advised that the employer desires to raise a formal objection as to the Regional Director's decision with respect to the 12 challenges which have heretofore been considered.

I have explained to the employer that this action by the Regional Director is discretionary and that in my present opinion no direct appeal can be made to the Board in Washington or to the courts. The

question arises, however, as to the status of the employer in the event some statement of his position is not made of record prior to the counting of the ballots. I tried to reach you by telephone today to discuss this subject, but am writing you this letter in order that you may give it some consideration so that we may discuss it by phone at an early opportunity.

If the Union's representative would have no particular objection, I would like to have another week to work out this problem with the employer for the counting of the ballots and I am hopeful that that might be arranged.

Thanking you for your co-operation, I remain.

Very truly yours,

/s/ J. D. BABBAGE.

JDB:ab

cc: Calif. Date Growers Assn.

Admitted in evidence January 9, 1956.

GENERAL COUNSEL'S EXHIBIT No. 2-CCC

PRospect 4711

Ext. 838

October 14, 1954.

John D. Babbage, Esquire,  
Best, Best & Krieger,  
Attorneys at Law,  
Evans Building,  
Riverside, California.

Re: California Date Growers Association  
Case No. 21-RM-280

Dear Mr. Babbage:

I have discussed with Acting Regional Director Yager your letter of October 13, 1954, in regard to a further postponement of the ballot count in this matter.

As you know, the consent election agreement provides that the Regional Director's findings on challenges and objections shall be final and binding and all the precedents in regard to this question have been to sustain this position unless the Regional Director acts in a capricious manner.

The Union is urging a speedy resolution of the situation and as it has been pending for a great length of time, and particularly in view of the continuance already granted you, Mr. Yager feels that

any further request for a continuance must be denied.

As you know, I will not be in town on October 19. Mr. Carl Abrams of this office will conduct the conference scheduled for 2:00 p.m. on that day.

Very truly yours,

IRVING HELBLING,  
Field Examiner.

cc: California Date Growers Ass'n.,  
Corner Highway 99 and King St.,  
Indio, California.  
Arthur Morrison, Director,  
United Packinghouse Workers of  
America, CIO,  
1010 South Grand Avenue,  
Los Angeles, California.

IH:plk

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-DDD

Best, Best & Krieger  
Attorneys at Law  
Evans Building  
Riverside, California  
Telephone 598

October 19, 1954.

Mr. George A. Yager,  
Acting Regional Director,  
National Labor Relations Board,  
111 West 7th Street,  
Los Angeles 14, California.

Attention: Mr. Irving Helbling, Field Examiner.

In re: Calif. Date Growers Assn.,  
Case No. 21-RM-280

Dear Sir:

This will acknowledge your letter of October 14, 1954.

Please be advised that on behalf of the California Date Growers Association we object to the findings on challenges. The appearance by a representative of the employer at your offices on October 19, 1954, at 2:00 p.m. pursuant to your order that the challenged ballots shall be opened and counted should not be regarded as a waiver by the employer of the employer's objections to the challenges.

Very truly yours,

/s/ J. D. BABBAGE.

JDB:ab

Admitted in evidence January 9, 1956.



## GENERAL COUNSEL'S EXHIBIT No. 2-EEE

United States of America  
National Labor Relations Board  
Case No. 21-RM-280

In the Matter of  
CALIFORNIA DATE GROWERS ASS'N  
(Employer and Petitioner.)  
and  
UNITED PACKINGHOUSE WORKERS  
OF AMERICA, CIO  
(Union.)

Date Issued October 19, 1954

Type of election: Consent.

REVISED TALLY OF BALLOTS  
(Counting of Challenged Ballots)

The undersigned agent of the Regional Director certifies that the results of counting the challenged ballots directed to be counted by the Regional Director on October 5, 1954, and the addition of these ballots to the original Tally of Ballots, executed on February 18, 1954, were as follows:

	Original Tally	Challenged Counted	Final Tally
Approximate number of eligible voters .....	182		
Void ballots .....	0	0	0
Votes cast for: United Packinghouse Workers of America, CIO .....	69	13	82
Votes cast against participating labor organization .....	70	8	78
Valid votes counted .....	139	21	160
		s/FCB	
Unopened challenged ballots .....	65	0 s/CA	0

A majority of the 160 valid votes has been cast for United Packinghouse Workers of America, CIO.

For the Regional Director,

/s/ CARL ABRAMS,

/s/ FLOYD C. BREWER.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating, and the compilation of the final tally, were fairly and accurately done, and that the results were as indicated above. We also acknowledge service of this Tally.

For California Date Growers Association.

10-19-54 Copy forwarded to Company by registered mail.

10-19-54 Copy forwarded to Best, Best & Krieger, Attorneys for Company, by ordinary mail.

For UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO.

/s/ JOHN JANOSCO.

Admitted in evidence January 9, 1956.

## GENERAL COUNSEL'S EXHIBIT No. 2-GGG

United States of America  
National Labor Relations Board

Case No. 21-RM-280

In the Matter of

CALIFORNIA DATE GROWERS ASSOCIA-  
TION

(Employer and Petitioner.)

and

UNITED PACKINGHOUSE WORKERS OF  
AMERICA, LOCAL 78, CIO

(Union.)

## CERTIFICATION OF REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has been cast for United Packinghouse Workers of America, Local 78, CIO, and that pursuant to Section 9 (a) of the National Labor Relations Act said organization is the exclusive representative of all the em-

ployees in the unit defined in the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, on the 21st day of October, 1954.

On behalf of

NATIONAL LABOR RELATIONS BOARD,

/s/ GEO. A. YAGER,

Acting Regional Director for Twenty-First Region  
National Labor Relations Board.

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-HHH

Best, Best & Krieger  
Attorneys at Law  
Evans Building  
Riverside, California  
Telephone 598

October 25, 1954.

Mr. George A. Yager,  
Acting Regional Director,  
National Labor Relations Board,  
111 West Seventh Street,  
Los Angeles 14, California.

Re: Objections to revised tally of ballots,  
California Date Growers Assn., Employer;  
United Packinghouse Workers of America, (Union).

Dear Mr. Yager:

I enclose herewith four copies of "Objections to Conduct Affecting the Results of the Election" in the above-captioned case.

Your record will show that a revised tally was issued on October 19, 1954. No person representing the California Date Growers Association was present at the counting, tabulating and compilation of the ballots, although Mr. James Wright, General Manager of the California Date Growers Association, was present in the reception room before the time set for the counting of the ballots and during the entire period that the ballots were being counted.

Your file will also reflect that the certification of representatives was sent out by your office on the 21st day of October, 1954, only two days after the revised tally was issued. I know of no rule or regulation of the National Labor Relations Board providing for certification of representatives within a two day period after the issuance of a revised tally of ballots.

Very truly yours,

/s/ J. D. BABBAGE.

JDB:ab

Encl.

Admitted in evidence January 9, 1956.



## GENERAL COUNSEL'S EXHIBIT No. 2-III

[Title of Board and Cause.]

OBJECTIONS TO CONDUCT AFFECTING  
RESULTS OF ELECTION

The California Date Growers Association, Employer and Petitioner, objects to conduct affecting the results of an election for the following reasons:

1. The time set by the Regional Director for the ballot count was 2:00 p.m., October 19, 1954. At that time Mr. James Wright, General Manager of the California Date Growers Association, was present at the reception desk at the Regional Office of the National Labor Relations Board; notwithstanding the presence of Mr. James Wright at said office, the counting, tabulating and compilation of the ballots in the above-captioned matter was performed by one or more Field Examiners of the National Labor Relations Board, and John Janosco, representing the United Packinghouse Workers of America, CIO, and no one was present representing the Employer.

2. The revised tally of ballots was not served on the Employer until October 20, 1954, yet on October 21, 1954, a certification of representatives was issued by the Regional Director for the Twenty-first Region of the National Labor Relations Board pursuant to the revised tally hereinabove mentioned.

Wherefore, Employer objects to conduct affecting the results of the election on the grounds that said

Employer was not represented at the counting, tabulating and compilation of the ballots; that said Employer was not represented because of the failure of the National Labor Relations Board, its agents and employees, to admit the representative of the Employer to the room where the ballot counting was being handled or to notify him that such ballot counting was going to take place; that said failure to so notify the said representative of the Employer was arbitrary, capricious and unreasonable.

BEST, BEST & KRIEGER,

By /s/ J. D. BABBAGE.

Attorneys for Employer and  
Petitioner.

Admitted in evidence January 9, 1956.

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GENERAL COUNSEL'S EXHIBIT No. 2-JJJ

PROspect 4711  
October 27, 1954.

Best, Best & Krieger, Esquires,  
Evans Building,  
Riverside, California.

Att: John D. Babbage, Esquire.

Re: California Date Growers Association,  
Case No. 21-RM-280

## General Counsel's Exhibit No. 2-JJJ—(Continued)

Gentlemen:

This will acknowledge your letter of October 25, together with four copies of a document entitled "Objections to Conduct Affecting the Results of the Election."

For your information, there is no provision in either a consent election agreement or the Board's Rules and Regulations for the filing of a document of this nature after the issuance of a Revised Tally of Ballots. All the issues relating to the challenged ballots, the counting of which made necessary the issuance of the Revised Tally of Ballots, were finally resolved by our issuance of the Supplemental Report on Challenges in this matter on October 5, 1954. It is standard practice, where challenges are overruled in sufficient number to make their count necessary, for the Regional Director to set a time and place and notify the parties thereof. At the time of the count, a Revised Tally of Ballots is prepared and served on the parties. In consent cases, the appropriate certification may be issued immediately.

As to the failure of you or your client to be present at the time the ballots were counted, you will recall that the Supplemental Report on Challenges designated October 11, 1954, at 2:00 p.m. at this office as the time and place for the counting of these ballots. Subsequently, on October 13, 1954, you requested an additional week before the count was made. On October 14, Field Examiner Helbling ad-

General Counsel's Exhibit No. 2-JJJ—(Continued) dressed a letter to you in which he indicated, among other things, that the count of the challenged ballots would be put over until 2:00 p.m., October 19, 1954, at this office. He also pointed out that Field Examiner Carl Abrams would, in his absence, conduct the conference. On October 19, you addressed a letter to me, in which you stated, in part, that the appearance by a representative of the Employer at our offices on October 19, 1954, at 2:00 p.m., pursuant to our order that the challenged ballots be opened and counted, should not be regarded as a waiver by the Employer of his objections to the challenges.

From the personnel in this office who were involved in the matter, I learned that the union representative arrived at approximately 1:50 p.m. to be present for the purpose of observing the count; that at approximately 2:05 p.m., Mr. Abrams asked the union representative to agree to a delay until 2:15 p.m., with the understanding that, if at that time no representative of the Company had appeared, the ballots would be opened. The union representative agreed to this. At 2:15 p.m., no person had appeared and asked for Mr. Abrams or identified himself in connection with this case. Mr. Abrams then inquired at the reception desk for you and was advised that you had not yet arrived. It appears that a gentleman did appear at the reception desk at approximately 1:45 p.m. and informed the receptionist that he was to meet you here. He inquired if you had arrived and was ad-

General Counsel's Exhibit No. 2-JJJ—(Continued)  
vised that you had not. He did not state to our receptionist his name or that it was a Labor Board matter with respect to which he was meeting you here. Mr. Abrams, upon being informed by the receptionist that you were not here, asked a second Field Examiner to witness the opening and counting of the ballots, which was then done in your absence.

It appears that, shortly after 2:30 p.m., you appeared and were informed by the receptionist that there was a gentleman waiting for you; that you, together with the other person, presumably Mr. Wright of the Company, then walked out of the office. In the interim, Mr. Abrams completed the count. Upon being advised by the receptionist that you had just arrived and stepped out with someone, Mr. Abrams, upon your return, explained to you the above facts and displayed the ballots to you as well as the tallies.

It is my position that this office did everything possible to suit your convenience in connection with the counting of the challenged ballots and the issuance of the revised tally. It is regrettable that the gentlemen representing the Company did not identify himself further than to state that he was awaiting your arrival. I think you will appreciate that our receptionist could not be expected to know whom either you or the unidentified gentleman wanted to see unless you asked for the staff member by name or identified the case with respect to which you were present. We, of course, regret that it was necessary to count these ballots in your absence.



General Counsel's Exhibit No. 2-JJJ—(Continued)  
However, under the circumstances, I do not believe that it can be said that any of our personnel acted in an arbitrary manner.

Very truly yours,

GEORGE A. YAGER,  
Acting Regional Director.

GAY:md

Admitted in evidence January 9, 1956.

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FLORENCE E. HAWKINS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. O'Brien:

\* \* \*

Q. By whom are you employed?

A. California Date Growers Association.

Q. In what capacity?

A. In charge of the payroll and personnel department.

Q. How long have you held that position?

A. For about two years.

Q. Now, "about" could be important in this. Did you assume [15] those duties before the date packing season began in August of 1953?

A. Yes.

(Testimony of Florence E. Hawkins.)

Q. Do you recall how long before?

A. Well, the reason——

Trial Examiner: Just take your time. Give it whatever thought you need to in order to answer.

The Witness: Well, actually, I believe I assumed those duties about the beginning of the season in '53.

Q. (By Mr. O'Brien): Had you worked for the Association before that time? A. Yes.

Q. Approximately how long have you worked for the Association? A. Three years.

Q. And what were your duties prior to August of 1953?

A. I was distribution clerk. I guess that is the closest. You can call it that.

Q. Can you tell us what your duties were as distribution clerk?

A. Well, primarily I was hired to recap the payroll cards and enter and recap packing reports and tie them together as to the total packing——

Q. In other words, you were hired to straighten out the records? A. Keep track of them. [16]

Q. Coming back to August of 1953, who was your immediate superior at that time?

A. Mrs. Yowell.

Q. What was her title?

A. She was office manager.

Q. Is she any relation to Mr. Yowell?

A. She is his wife.

Q. And Mr. Yowell—what is his position?

A. Plant superintendent.

(Testimony of Florence E. Hawkins.)

Q. Has been for a great many years, has he not?

A. I think so.

Q. And to whom was Mrs. Yowell responsible?

A. Mr. Wright, I would say.

Q. That is Mr. Wright sitting over here?

A. Yes, sir.

Q. What is his title?                   A. General manager.

Q. In August of 1953, did you have anything to do with recalling workers for the begining of the date season?           A. Yes.

Q. Did you receive instructions from someone as to what you should do?           A. Yes.

Q. From whom?           A. Mr. Yowell. [17]

Q. From Mr. Yowell. What were his instructions?

A. Well, I can't say when we started taking applications, but we start taking applications first, and then when they are ready to start operation. I am given instructions to call in employees as they are needed. We have a new application every year. I mean we don't go by the supposition that once a person has worked there that we just automatically use that. We have a new application from our employees every year.

Q. Well, there is always a period in the summer when—at least, during the three years you have been there, the three summers you have been there, there has been a period when there was no date packing going on?           A. Little or none.

Q. So when employees are laid off in the spring,

(Testimony of Florence E. Hawkins.)

so far as you know, they are not given any specific instructions as to when they can report in the fall?

A. No.

Q. Now, the reason I am asking you to concentrate, if you can, on the fall of 1953, is because the fall of 1953, '54 and '55, may be different, and if there are any differences, we want to know what they are. Since '53, was the first time that you had anything to do with it, it should be fairly clear in your mind. Do you follow me?

A. Yes, sir.

Q. Then, sometime in 1953, did you do anything about [18] inviting applications to work?

A. Yes. We sent out a letter advising them approximately when we were going to start operation and scheduling a time when we would like them to come in to put in their applications.

Q. Were those individual letters?

A. Well, they were form letters and sent out individually.

Q. It was a form letter?

A. Yes.

Q. And they were mailed to individuals?

A. Yes, sir.

Q. How did you select the names of the people who would get those letters?

A. I went down the list, the seniority list we had.

Q. You had a seniority list?

A. Yes, sir.

Q. Had you prepared the seniority list yourself?

A. Yes, I did.

Q. I show you a document which has been filed as General Counsel's Exhibit 2-O. Now, that is the document which was used as a portion of the voting

(Testimony of Florence E. Hawkins)

list in the last column election. These little pencil-drawn marks indicate that the individual voted, and I am not sure what the red check marks indicate, but aside from these pencil-drawn check marks and these red check marks is the balance of that page typing.

A. Look; this is might be. [La.]

Q. Is that the seniority list which you used when you sent out letters to employees in September or August of 1953?

A. Well, sir, I don't know whether that is the specific list, but it probably contains the names that were on the list that I used.

Q. That is, you think this list was copied from the list which you used in August or September?

A. Probably, yes, sir.

Q. Would you have that original list available anywhere, or would it be something that has been destroyed? A. No, I would have to check.

Q. Anyway, your present recollection is that this General Counsel's Exhibit 241 was prepared from a different list? A. Yes, sir.

Q. Now, in preparing the original seniority list, what source material did you use?

A. I used all their books and all the information I could find on their employment records with us.

Q. Did that mean that you sent out a letter to everyone who had ever worked for the Association?

A. No, sir. I thought you asked me how I compiled the list.



(Testimony of Florence E. Hawkins.)

Q. I see. What basis for your selection did you use for putting names on the list?

A. In accordance with the—the list that I am referring to is the first voluntary list I guess that we had under the [19] union contract. I compiled it, and, as I say, no assurance was believed in it according to the agreement, and so forth, that was in the contract. That is when I went by their records. That was made up in November of '32. I believe, that that was used as our list of employees, so I used that when I sent out the notices to the people the following fall.

Q. Did you use the November, 1932 list—did you send out notices to everyone whose name was on that?

A. Providing they had not quit in the meantime.

Q. Let's see if I get this straight. When you did you take the November, 1932 list which was had prepared—you prepared the November, 1932 list?

A. Yes sir.

Q. You took that, and then as you came to a name on that list, you saw whether or not they had quit?

A. I tried to keep the list up as late as to those who were no longer there. Also, that were additions made. If they had worked 12 weeks in that season, they were added to the original list.

Q. This list wasn't any static thing, that it was something—

A. It was—I understood that it was to be kept up to date.

(Testimony of Florence E. Hawkins.)

list in the last consent election. These little penciled check marks indicate that the individual voted, and I am not sure what the red check marks indicate, but aside from these penciled check marks and these red check marks, is the balance of that your typing?

A. Looks like it might be. [19]

Q. Is that the seniority list which you used when you sent out letters to employees in September or August, of 1953?

A. Well, sir, I don't know whether that is the specific list, but it probably contains the names that were on the list that I used.

Q. That is, you think this list was copied from the list which you used in August or September?

A. Probably, yes, sir.

Q. Would you have that original list available anywhere, or would it be something that has been destroyed?

A. No, I would have to check.

Q. Anyway, your present recollection is that this General Counsel's Exhibit 2-O was prepared from a different list?

A. Yes, sir.

Q. Now, in preparing the original seniority list, what source material did you use?

A. I used all their folders and all the information I could find on their employment records with us.

Q. Did that mean that you sent out a letter to everyone who had ever worked for the Association?

A. No, sir. I thought you asked me how I compiled the list.

(Testimony of Florence E. Hawkins.)

Q. I see. What basis for your selection did you use for putting names on the list?

A. In accordance with the—the list that I am referring to is the first seniority list I guess that we had under the [20] union contract. I compiled it, and, as I say, to ascertain who belonged on it according to the agreement, and so forth, that was in the contract. That is when I went by their records. That was made up in November of '52, I believe, then that was used as our list of employees, so I used that when I sent out the notices to the people the following fall.

Q. Did you use the November, 1952, list—did you send out notices to everyone whose name was on that?

A. Providing they had not quit in the meantime.

Q. Let's see if I get this straight. What you did, you took the November, 1952, list which you had prepared—you prepared the November, 1952, list?

A. Yes, sir.

Q. You took that, and then as you came to a name on that list, you saw whether or not they had quit?

A. I tried to keep the list up to date as to those who were no longer there. Also, there were additions made. If they had worked 12 weeks in that season, they were added to the original list.

Q. This list wasn't any static thing, then? It was something——

A. It was—I understood that it was to be kept up to date.

(Testimony of Florence E. Hawkins.)

Q. Do you know whether any seniority list was ever posted in the packing shed?

A. Yes, sir. A copy of that list was posted. [21]

Q. Do you know whether it was in November—strike that. Do you know whether it was the November, 1952, list or this list which was used at the election?

A. It would have been the '52 list.

Q. Do you know during what period of time that was posted?

A. Well, it was posted as soon after as I had completed it, a copy was posted. How long it was up there, I don't know. I mean I have no—it possibly could still be up there.

Q. That is, it was posted some time in November of 1952?

Trial Examiner: 1952?

The Witness: Yes.

Mr. O'Brien: Yes. That date is right.

Q. (By Mr. O'Brien): Then you had one copy in your own office in which you made changes, but do you know of any changes that were made on the posted seniority list?

A. Yes, sir. I tried to keep those up to date, also.

Q. Do you know when operations stopped in the spring of 1953?

A. No, sir, I don't.

Q. Well, whenever it was, the people whose names still appeared on this posted seniority list in the spring of 1953, would be the ones that received letters in the fall of 1953, when you started operations?

A. That's right.

Q. There might have been some mistake, but that

(Testimony of Florence E. Hawkins.)

was your aim?           A. Yes, sir. [22]

Q. Did you send letters to anyone else besides the corrected seniority list?

A. Well, until the season was over, I didn't know until I had figured back how many had acquired the 12 weeks which constituted seniority, so I sent to those also, but I doubt that they were on the list out in the plant at that time.

\* \* \*

Q. (By Mr. O'Brien): Then your aim in August, or September, of 1953, was to send an individual letter to every person whose name appeared on the seniority—posted seniority list, and [23] also to persons whose names did not appear on the posted list but had worked long enough during the—had worked a specific number of weeks during the '52-'53 season?           A. That is right.

Q. My next question was whether that exhausted the names of people who received special letters from you in '53?

A. May I say I don't remember whether—I can't remember at this time whether I then sent these notices to those who I had listed working that hadn't worked the required 12 weeks or not. I'm not sure now whether I did or not.

Q. Well, at any rate, as far as the people to whom you sent letters, were there enough of them to keep your date operation going, or did you need additional employees?

A. I needed additional ones.



(Testimony of Florence E. Hawkins.)

Q. And how did you go about getting them?

A. Well, once it is known that we are taking applications, then people come in and put in their applications, so I usually have a backlog of applications, and then when I have exhausted the list for calling them in, I call in all these people who are not on our list.

Q. I think you said you required a new application every fall?

A. Yes.

Q. From each person. And that would be true even though this same person had been working year after year for 10 or 15 years? [24]

A. That is correct. [25]

\* \* \*

Q. Did you start a night shift in October of 1953, do you happen to recall? [26]

A. Since we started the night shift every year I have been there, I rather imagine we did.

Q. Well, the date isn't too important, but I wondered if you recalled anything of the circumstances of starting a night shift before the strike in 1953?

A. Well, the usual procedure when we were going to start a night shift, I was notified that we would be starting on such and such a date and to count on having so many people in on that particular date.

Q. Those instructions came from Mr. Yowell?

A. Yes, sir.

Q. And how did you go about staffing the night shift?

A. Well, I usually check the applications of those

(Testimony of Florence E. Hawkins.)

who requested night work only. Some applications they couldn't work days. So I usually specified on the back that they wanted night work only, so I took those first to determine how many I had of those and how many were still available for work and would work, and then I took all the rest of them and just tried from there.

Q. Were those applications of people who were working days at the time?

A. No. I am speaking specifically of those who weren't at that time employed at California Date Growers.

Q. Assuming that this night shift—that there was a night shift in the fall of 1953, before the strike started, and [27] assuming that it happened in October, you don't think that you offered night work to any of the day workers at that time?

A. The procedure at California Date is: That is determined in the back in the packing department, then I am informed as to the difference required to make up that shift. In calling in people—any transfer that is made for people who are switching from days to nights is done in the plant, and then I am notified of the additional people we need.

Q. So there may have been some changes made by Mr. Yowell out in the plant, and he tells you for your bookkeeping purposes that they have changed from one shift to another?

A. That's right.

Q. But as far as your getting new employees is

(Testimony of Florence E. Hawkins.)

concerned, he just tells you the number of packers he wants, or graders——

A. That means in addition to the ones who were currently working.

Q. And for that you looked only to applications filed during the current season of people who were not then working?      A. That's right.

Q. Did the plant operate during the strike?

A. Yes, sir.

Q. Were grading operations conducted during the strike?      A. Yes, sir.

Q. Packing operations?      A. Yes, sir. [28]

Q. Was there any operation that was completely suspended during the strike, that you know of?

A. I don't remember that there was.

Q. And during the strike did you make any effort to secure replacements for the strikers?

A. Yes, sir.

Q. What effort did you make, or what did you do?

A. Took applications for people coming in asking for work.

Q. Did you go back over the applications which you had on file?      A. I don't remember.

Q. But you received applications for new employment?      A. Yes.

Q. And you put these people to work?

A. Yes, sir.

Q. Do you know of anything of a newspaper ad that was placed in the paper during that strike offering employment to strikers?      A. No, I don't.

(Testimony of Florence E. Hawkins.)

Q. Were you present when a group of strikers returned to work with their representatives, Mr. Smith and Mr. Moorehead?

A. When they came in to sign availability for work.

Q. That is what I think I have in mind. I'm not sure. I wasn't there.

A. Yes. I was. [29]

Q. Well, you tell us about it, this availability for work.

A. Well, we understood that they were coming in to sign up that they were ready to go back to work, and we had a list, just a sheet of paper, and they came up to the window and signed their names. That was all there was to it.

Q. Was it a single sheet of paper?

A. Well——

Q. What I mean is——

A. Yes. It was just a lined list, and they just signed on the line that they were available.

Q. It wasn't a new application, then?

A. No. It was just a list.

Q. Have you made any further use of that list?

A. No, sir.

Q. Did anyone tell you to have these people come and sign the list, or did they just appear there and want to sign and you let them sign?

A. No. They had—Mr. Moorehead was with them and someone else.

Q. There was a Mr. Smith representing the union there.

(Testimony of Florence E. Hawkins.)

A. They more or less ushered them up to the window, and that is just the way it was handled, and then I saw that each one signed, and that's about all there was to it.

Q. Had you had any instructions from Mr. Wright about how to handle that? [30]

A. No, not that I recall. I was just told that they were coming in to sign up for work. I don't recall any specific—

Q. And you didn't hear any conversation that Mr. Wright might have had with Mr. Moorehead or Mr. Smith?      A. No.

Q. Have you had any occasion to look at that—did you call it an availability list?

A. You might call it that. They signed up that they were now available for work. No, I didn't.

Q. Have you looked at it from that day to this?

A. I don't remember.

Q. At least, you didn't use it in recalling any people to work after that date?      A. No.

Q. Now, after these people came in and signed this list, did Mr. Yowell or Mr. Wright tell you that they'd need some more packers or graders?

A. Yes. We needed the graders first, and—I forget—around December 10th, somewhere along in there, I think that we needed some graders.

Q. By the way, I have been assuming that it was on December the 8th, when this group of employees came up to your window and signed the list and said they were available for work. [31]

A. That sounds about the date.



(Testimony of Florence E. Hawkins.)

Q. And you also needed a couple of laborers about that time, too, didn't you? I will dig out another report for you in just a minute.

A. Well, sir, we had been hiring laborers right along.

Q. Anyway, when you needed graders, how did you obtain them?

A. Took the list and went right down the list.

Q. By the list, you mean——

A. I am speaking of my '52 seniority list.

Q. I am wondering whether you were using that list, or whether you were using this list that was used at the election.

A. As I say, not being able to compare this with the other, I can't say for sure, but I used the seniority list that was made up in '52.

Q. And I think every grader to whom you offered a position accepted immediately, is that correct?

A. Yes. [32]

\* \* \*

Q. (By Mr. O'Brien): Miss Hawkins, I show you General Counsel's Exhibit 3, for which I thank you very kindly. I believe you typed that.

A. Yes, sir.

Mr. O'Brien: It is a tremendous job and a beautiful job, Mr. Examiner.

Q. (By Mr. O'Brien): Does that indicate the date of hire of everyone who worked during the 1952-1953 date season—I beg your pardon—1953-1954 date season?

A. I would say yes, that covers them. [35]

(Testimony of Florence E. Hawkins.)

Q. Even though they worked only one day, their name would still appear on that list?

A. I would say that everybody—that looks like a complete list.

Q. And in the first column where you say '52-'53 seniority list, date of seniority, does that indicate the original date that the individual went to work for the company?

A. It indicates what was set up on that original seniority list as their date of seniority.

Q. That is something you hope to get in Indio tonight and——

A. Would you like me to qualify that statement or explain a little further?

Q. Yes, if you would.

A. Due to the 12-week deal in the contract, perhaps they had worked for us previously, but there was a break, which meant that their seniority started as of this date.

Q. So some of these people may actually have worked many more seasons than would appear from this seniority date?      A. That's correct.

Q. And some of these people here who have no seniority date may also have worked for the company in previous seasons?      A. Yes.

Q. And everyone on General Counsel's Exhibit 3, filled out a new application in the spring?

A. Yes—in the fall. [36]

Q. In the fall, rather. I'm sorry.

A. Yes, sir.

Q. On page 1, toward the bottom, you will see

(Testimony of Florence E. Hawkins.)

the name of Geneva Mae Nard.           A. Yes.

Q. And opposite her there are two little star marks indicating that she returned to work after the strike. Is that what it indicates?

A. I forget what month—yes.

\* \* \*

Q. (By Mr. O'Brien): Anyway, Miss Hawkins, from other records which you submitted, I believe that the double star should appear opposite the name of Lourie Jaramillo rather than Geneva Mae Nard, and I would like to have you check that.

A. Yes, sir.

Q. Aside from that, all of your figures and list check [37] perfectly as closely as I can determine.

Then this same Exhibit, General Counsel's 3, indicates that at a somewhat later time, certain packers were recalled to work?           A. Yes, sir.

Q. Will you describe first of all how the request for packers was given to you?

A. Mr. Yowell came in and told me that we were going to start the night shift, and we would need the crew to do it, and told me to call them in, so I used the original '52-'53 list and started at the top and went down.

Q. That is the original list which you will bring back tomorrow?           A. Yes, sir.

Q. Thank you. Now, as you came to the first name—I think you can determine by looking at either General Counsel's Exhibit 3, or at the list that was used at the election what the first name of the packer would be that you called.

(Testimony of Florence E. Hawkins.)

A. It would be Mayme Ruby.

Q. And she indicated that she was willing to come in and work, and so "After the strike" and "January 18th," indicates that she came in to work after the strike, is that right, the date she came to work?

A. No. That indicates refusal to accept employment on the night shift. That is a refusal. [38]

Q. She said no, she couldn't come in?

A. Yes.

Q. Mayme Ruby was the first. Then Kathryn White, and you got the same answer from her?

A. Let me clarify this. Mayme Ruby is Kathryn White's mother and when I called—she lives with Kathryn—and when I called, I got Kathryn and talked to her first and asked about Mayme at the same time, so actually I never did talk personally to Mayme Ruby. Kathryn told me—they live at the same place—and she refused for her mother as well as for herself.

Q. And you had this original seniority list before you, and after you completed that call did you make a little notation on it?

A. Yes—or I didn't make it on the list, no. I copied off the names on a separate list and made the notations. I didn't copy on the original seniority list, no. I didn't make a notation.

Q. I show you General Counsel's Exhibit 2-O again; opposite the name of Mayme Ruby, you have in parentheses "Refused work," and "Kathryn White, refused work." Did you type that in?

(Testimony of Florence E. Hawkins.)

A. When this list was made up, yes.

Q. And that is what you are referring to that is the result of this telephone conversation? [39]

A. That is right.

Q. Do you happen to have the original notes of these telephone conversations?

A. I would have to check my records.

Q. But, at least, the notations that you have on General Counsel's Exhibit 2-O were taken from those original notes? A. That's right. [40]

\* \* \*

Q. (By Mr. O'Brien): I think the exhibit will also show that you recalled, I believe, three laborers? A. Men.

Q. Men, yes. Did you have any conversation with any of the men when you called them back to work?

Mr. Babbage: Just a moment. I would like to object again. I think that the nature of the question that the exhibit shows something or other is not a proper question. It is too general. I have no way of knowing what men he is talking about, and I would object to the question on the ground that it is not clear.

Q. (By Mr. O'Brien): Suppose I call your attention to Mr. [47] Luis Luna, seniority list No. 1. Did you call him back to work after the strike?

A. Yes.

Q. Did you have any conversation with him when you called him back to work?

A. Other than I told him we would like him to come to work at such and such a time.



(Testimony of Florence E. Hawkins.)

Q. Did you have any conversation with A. Francisco Luna?      A. No.

Q. Or with Luis Bautista?      A. No.

Q. With regard to the graders who returned to work about December 10th, according to your chart, which is General Counsel's Exhibit 3, do you recall any conversation with LaVerda Miller?

A. No, I don't.

Q. Or Bonnie Johnson?      A. No.

Q. Or Florence Schults?      A. No, sir.

Q. Pearl Johnson?      A. No, sir.

Q. Or Carmen Sandoval?      A. No, sir.

Q. Or Nevay Carter? [48]      A. No, sir.

Q. Or Mildred Moore?      A. No, sir.

Q. Or Edith Wyrick?      A. No, sir.

Q. Or Rosa Pizano?      A. No, sir.

Q. Or Nora Edwards?      A. No, sir.

Q. Or Marie Ellis?      A. No, sir.

Q. You just asked them to come back to work and they came?      A. Yes, sir.

Q. And with regard to graders, do you know whether any grader said no, she couldn't come back to work?

A. As near as I can see from this list, this looks like it went right down the list and evidently they all accepted. [49]

\* \* \*

Q. (By Mr. O'Brien): Now, again I am going to direct your attention to—you can use either one of those lists that you have before you, and see if you recall any conversation with the following

(Testimony of Florence E. Hawkins.)

packers who were not recalled after the strike, immediately after the strike. [50]

Mayme Ruby. I asked you about her before.

A. And, as I say, I had no direct conversation with Mayme Ruby inasmuch as she lived with her daughter, Kathryn White, and when I called I got Kathryn direct, and, of course, since I wanted Kathryn as well as Mayme, I talked with Kathryn about it and asked her would Mrs. Ruby come in, and she refused for both of them.

Q. Did you call Anna Gagnon? A. Yes.

Q. Do you recall what she said?

A. She didn't come in. She refused the work.

Q. Lillian Fieber? A. She refused.

Q. Virginia Luna? A. She refused.

Q. Florence Flores? A. She refused.

Q. Celia Vasquez? A. She refused.

Q. Ramona Torres? A. She refused.

Q. Lupe Quijada? A. She refused.

Q. Deborah Dozier? A. She refused. [51]

Q. And Geneva Mae Nard, whom I mentioned before?

A. As I say, that needs checking, because——

Q. Now, all these people whose names I have read off to you were strikers, were they not?

A. Yes.

Q. Now, it is my same question again, whether you recall any conversation with any of the following girls when you called them:

Irene Canel. I think your records indicate that she came to work. A. She accepted.

(Testimony of Florence E. Hawkins.)

Q. These will be names of girls who accepted your invitation for night work in the spring, or in January, rather? A. Yes.

Q. Jessie DeLa Torre?

A. Yes, she accepted.

Q. Mercedes Ortiz? A. She accepted.

Q. Velia Valencia? A. She accepted.

Q. Now then, Julia Avila or Julia Luna—I assume Luna would be her married name?

A. Yes.

Q. Mary Bautista? A. She accepted. [52]

Q. Mary Durbin? A. She accepted.

Q. Angie Canel? A. She accepted.

Q. Frankie Farmer? A. She accepted.

Q. Maria Flores Reyes? A. She accepted.

Q. That is, Reyes would be her married name?

A. Yes.

Q. Jessie Sandoval? A. She accepted.

Q. Lucia Chavez? A. She accepted.

Q. Mary Mendez? A. She accepted.

Q. Lourie Jaramillo?

A. Yes, she accepted.

Q. Then coming back again, you have already told us about your conversation with Kathryn White, or did you? A. Yes.

Q. And Socorro Romero? A. She refused.

Q. Pauline Skinner?

A. She told me that she would talk with Mr. Yowell and let [53] me know later.

Q. She didn't let you know later?

A. Mr. Yowell told me she wouldn't be in.

(Testimony of Florence E. Hawkins.)

Q. Beryl Warren?

A. Same thing with Beryl. She wanted to talk with Mr. Yowell first before she gave me a definite answer.

Q. Margaret Mesa. Do you remember anything about her?

A. I don't remember. This would indicate that I didn't call her.

Q. Do you know why you didn't?

A. Probably couldn't get her. What I mean, I couldn't get her by phone, probably.

Q. But you would have——

A. I probably tried to contact her and couldn't.

Q. That is, you offered employment to people below her on the list?

A. Yes, and evidently I had no way of getting in touch with her by phone.

Q. Josephine Perez?                      A. She said no.

Q. Ellen Chester?                      A. She said no.

Q. Lucretia Dallosta?                      A. She said no.

Q. Manuelo Carrillo? [54]

A. She refused.

Q. Do you think you got down that far on the list?                      A. Yes. I got that far down.

Q. Lucy DeLa Riva?

A. No. As I say, these—Lourie Jaramillo, I believe was the last one on the list; I believe.

\* \* \*

Q. (By Mr. O'Brien): You called Lourie Jaramillo and she was the last one you called, is that right?

(Testimony of Florence E. Hawkins.)

A. As I recall, she was the last one.

Q. Did any of these people, when you offered employment to them, ask you any questions about their seniority?

A. Well, Kathryn White asked me what her status would be, but inasmuch as I did not know, I told her I couldn't tell her a thing about it. All I was asking was would she be available and would she come in.

Q. She asked you and you said you didn't [55] know? A. That is correct.

Q. Had you had any instructions from Mr. Yowell as to what reply you should make if inquiry was made about seniority?

A. No, sir. It wasn't discussed.

Q. You didn't discuss seniority with either Mr. Yowell or Mr. Wright, then? A. No, sir.

Q. Did you have anything to do with layoffs?

A. I did not, no. Of course, it was up to me to see that my lists were up to date, and that was the basis on which they made their layoffs, but as far as the layoffs, no. That was—it was up to me to furnish lists to the packing department, and they made the layoffs. [56]

\* \* \*

Q. (By Mr. O'Brien): I show you General Counsel's Exhibit 4 and ask you if you prepared the document? A. Yes, sir. [60]

\* \* \*

Q. Now, I ask you again on whose instructions you prepared General Counsel's Exhibit 4.



(Testimony of Florence E. Hawkins.)

A. Mr. Wright instructed me to prepare it.

Q. Do you remember better about when it was, whether it was March 18th or later?

Trial Examiner: When she received the instructions or when she prepared the list?

Mr. O'Brien: When she prepared the instructions.

The Witness: It must have been after—a little later than the 18th of March.

Q. (By Mr. O'Brien): Do you recall whether it was before or after we had the hearing in Indio at which I presided? The date of that hearing was—in case it would help you—April the 29th.

A. It probably was before that, then. [63]

Q. You don't know?

A. I don't remember exactly, no.

Q. Now then, what were Mr. Wright's instructions to you?

A. That was to prepare a list of all those that were working as of that date.

Q. As of March 18th? A. Yes.

Q. And specifically, how did he tell you to prepare the list?

A. In the order in which—according to their seniority date.

Q. Did he tell you how to ascertain their seniority date?

A. Well, it was by my records, which—the list I had always gone by was the date that they were there plus the additions and—in that manner.

Q. I am calling your attention specifically to

(Testimony of Florence E. Hawkins.)

LaVerda Miller. What seniority do you show for her on General Counsel's Exhibit 4?

A. 12-10-53.

Q. If you will look at General Counsel's Exhibit 3, I think you will see that LaVerda Miller's seniority shows as of September 21, 1940. Am I right on that?

A. It shows on there on the 52-53 seniority list, yes, sir.

Q. As of September 21, 1940?

A. That is correct.

Q. Now, did you make that change in her seniority position on Mr. Wright's instructions? [64]

A. Yes, sir.

Q. That is what I am getting at. Just what were his instructions with regard to placing of the names on this list?

A. Well, sir, when we recalled people who came back to work after the strike, their seniority date began the day they came back to work, consequently, that made the change in LaVerda Miller's seniority date.

Q. That was Mr. Wright's instructions to you at the time you prepared this March 18th list, is that right?

A. I was told at the time—not right at the time that I called them in, but after we knew they were coming in to work—I mean when I asked what—I was told their date started from the day they came back to work, so, naturally, I had that date before

(Testimony of Florence E. Hawkins.)

I started to make this list. That had been determined when they came back to work previously.

Q. Now, you say sometime after they came back to work Mr. Wright told you what the new seniority dates would be?

A. That it would begin from the time they started back to work.

Q. Were those written instructions or oral instructions?      A. Oral.

Q. Do you remember how long it was after they came back to work that Mr. Wright told you about their new seniority?

A. No, sir, I don't remember.

Q. Anyway, after you received this information from Mr. [65] Wright, did you communicate it to any employee?      A. No, sir.

Q. And so far as you know, there was no change made on the posted seniority list indicating that people who returned to work after the strike were receiving new seniority?

A. I didn't make any correction on it, no, sir.

Q. I think you testified yesterday you didn't even know whether it was still up there after the strike?

A. I'm not sure whether it was or not. I haven't had it checked for awhile.

Q. Were you able to find your master seniority list that I was asking about yesterday?

A. Well, no, sir, but it was—as I say, what it consisted of was the same copy that probably the union representative has with any quits or that off

(Testimony of Florence E. Hawkins.)

of it, because I kept mine up to date and he wouldn't have had that information.

Q. After you prepared this March 18th list, what did you do with it?

A. Well, there was no occasion—the season was over, and there was no occasion to use it until the following season when we started to call back in.

Q. Do you think now that the list was prepared after practically everyone had been laid off at the end of a season?

A. I rather imagine that we had finished, or very nearly so, our operation. [66]

Q. March 18th would have been selected as a period of fairly full operation, then?

A. I would have said that on March 18th, it would probably have consisted of the nucleus that we would be using, not during the peak of the season, but possibly those that we would retain until we were ready to finish operation.

Q. Do you happen to recall approximately how many employees you had before the strike working at that time? It would be close to 300, wouldn't it?

A. I would say it should have been approximately that. I don't remember, no, but—

Q. And after the strike you never came close to that figure in that season? A. No.

Q. I think the reason was partly poor crop, loss of market, the strike, various things?

A. There were a lot of reasons, yes.

Q. Then when was the first occasion that you had to use this March 18th list?

(Testimony of Florence E. Hawkins.)

A. That would have been when I started calling back in the fall of '54.

Q. That would be August of '54?

A. Yes, sir.

Q. Did you receive specific instructions in August of 1954, as to how you were to staff the operation? [67]

A. Well, of course, as usual, we have our applications first before we do any calling in. That must be taken care of first.

Q. All right. Now, you remember the year before you sent out letters to people inviting them to apply, and the word was passed by word of mouth? You recall that? A. Yes, sir.

Q. Now, in 1954, did you send letters to people?

A. No, sir. There was no specific notification by letter.

Q. Not to anyone? A. No, sir.

Q. Did you put an ad in the paper or announce on the radio?

A. To my knowledge, there was no ad in the paper, but we had a sign up in the hallway that said that we would be taking applications September the 1st—August the 1st, I guess it was.

Q. About August?

A. No. It must have been September, September the 1st, I think that we took applications. I don't remember exactly when we started, but around that date.

Mr. O'Brien: Mark this General Counsel's Exhibit 6.



(Testimony of Florence E. Hawkins.)

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. O'Brien): I ask you to look at General Counsel's Exhibit 6 for identification.

Mr. O'Brien: Again, Mr. Examiner, I think this document [68] explains itself. It is a hiring list for the 1954-55 season.

Q. (By Mr. O'Brien): And that was also prepared by you, Miss Hawkins? A. Yes, sir.

Q. I call your attention to the third column there which indicates the starting dates in 1954 of various employees. It appears to me the first date is September 1. Is that the day when you put the first employees to work in the fall, or are there a few before that?

A. That was our official starting date for the 54-55 season.

Q. Now, before September the 1st, though, you had a number of applications on file? A. Yes.

Q. And you think now that those applications just came from people dropping in at the office and filling out applications? A. Yes, sir.

Q. When these applications were filled out, did you advise the applicants as to when they should start to work?

A. No, because, see, I don't know at the time I take an application.

Q. Now, when was the first notice that you gave

(Testimony of Florence E. Hawkins.)

to employees as to a specific time for reporting for work?

A. Well, I judge it was around the 1st of September.

Q. About the 1st of September. Was that notice given by telephone? [69]

A. When I call them in, I usually telephone, yes, sir.

Q. Did you call them in in any particular order?

A. Yes, sir.

Q. What order did you use?

A. I used this list which I had prepared on the 18th of March, 1954, and I went down it. [70]

\* \* \*

Q. (By Mr. O'Brien): Now, this first group of names are what? [75]

A. They are packers in the order of their seniority.

Q. And the next group of names are what?

A. Are graders in the order of their seniority.

Q. The approximate break is where between the packers and the graders in the order of their seniority?

A. What designates how I know they are packers or graders, what indicates to me is their clock number. We carry a certain grouping for packers and a certain grouping for graders, and that is my indication of whether they are packers or graders.

Q. What are your numbers on packers?

A. They run from one through 200, and the

(Testimony of Florence E. Hawkins.)

graders start at 300 and go on up, so that is my indication. The clock numbers indicate to me they are packers rather than anything else. That is my way of distinguishing.

Trial Examiner: Up to 300 they are packers; over 300 they are graders?

The Witness: From 100. Then our men, of course, start from one to a hundred, then the 100 through 200 are packers—well, I should say up to 300 are packers, and then from 300 on are graders.

Q. (By Mr. O'Brien): That takes you down through Lourie Jaramillo. How did you determine the seniority of the individuals above Lourie Jaramillo?

A. Those who are on the 52-53 seniority list, on this list, that was the date used; if they hadn't been on the 52-53 [76] seniority list, it was their starting date.

Q. Then beginning down there with Alpha Gray—

A. Same thing.

Q. She is a grader?

A. Yes, sir. The grading department was set up the same way as the packers or the determining of their seniority.

Q. Now, when the seniority list—the date on the seniority list appears as December 3, 1953, Fedalino Gallardo, that indicates that she was first hired by the company during the strike?

A. That's correct.

Q. Would the same be true of the following names, that is, Elisa Gonzales?

A. Yes, sir.

(Testimony of Florence E. Hawkins.)

Q. How about December the 8th, what would that indicate?      A. Lillie Mae Bonham.

Q. That would be still during the strike?

A. That's right.

Q. Did you use the same principle in setting up the list of men?      A. Yes, sir. [77]

\* \* \*

Q. Anyway, you think that in the fall of 1954, you called all the people on this March 18th list by telephone?      A. Yes, sir.

Q. Or, at least, you tried to reach all of them?

A. That's correct.

Q. Was that true whether or not you had an application on file from them at the time, a new application for 1954?

A. No. If I didn't have an application, I didn't call them, no, sir. [78]

Q. That is, before September the 1st, you would have to have a written application from each one of these people?

A. That's right. That they were available for work.

Q. That is the same application that you require of every employee every fall?      A. That is true.

Q. You didn't call them and invite them to come in and file an application?      A. No, sir.

Q. See, what I had in mind was the previous year when you sent out these letters to people.

A. I know, sir, and we didn't make any formal notification. I will say this: That usually with people who have worked for us a number of years or

(Testimony of Florence E. Hawkins.)

representative, local representative, Mrs. Bertha Adams, penciled notations which have nothing to do with the exhibit, and I think it is apparent from the testimony of the witness that there were changes made on the posted list—and also in your office copy from time to time?      A. Correct.

Q. But this represents the basis of changes in seniority since November 25, 1952?      A. Yes.

Q. And all subsequent changes have been alterations in this list?      A. Yes, sir. [91]

\* \* \*

Q. (By Mr. O'Brien): Miss Hawkins, did you type the list?      A. Originally, yes, sir.

Q. Was the information thereon contained true at the time you typed it?

A. To the best of my knowledge.

Q. Was it based upon company records which you consulted?      A. Yes, sir. [92]

\* \* \*

### Cross-Examination

By Mr. Babbage:

Q. Is it true, Miss Hawkins, that all of the people on that list were either contacted or an effort was made to contact them for employment with the exception of the one person who was not hired that season, Elisa Gonzales, prior to the beginning of the season in 1954, that is, prior to September 1, 1954?      A. Yes, sir. [95]

\* \* \*



JOHN JANOSCO

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. O'Brien:

\* \* \*

Q. By whom are you employed?

A. United Packinghouse Workers of America.

Q. And that is affiliated with the American Federation of Labor and Congress of Industrial Organizations?

A. That's correct.

Q. What is your official title?

A. I am field representative.

Q. Is Indio part of your territory?

A. Yes, it is.

Q. When did you first meet Mr. Babbage?

A. I first met Mr. Babbage I believe at the hearing we had on the challenged ballots in Indio on this case.

Q. Was that also your first meeting with Mr. Wright?

A. It was my first meeting with Mr. Wright, that is correct. [96]

Q. After the United Packinghouse Workers was certified by Mr. Yager as acting Regional Director, did you attempt to communicate with the California Date Growers Association?

A. I did.

Q. Was that by letter?

A. By letter.

Mr. O'Brien: Mark this as General Counsel's Exhibit 8.

(Testimony of John Janosco.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. (By Mr. O'Brien): I show you General Counsel's Exhibit 8 for identification. I ask you to look at General Counsel's Exhibit 8 for identification, the yellow carbon. Is that the original copy of the letter that you sent to the Date Growers Association?      A. It is.

Q. Did you receive any reply to that communication?      A. No, I did not. [97]

\* \* \*

(The document heretofore marked General Counsel's Exhibit No. 8 for identification was received in evidence.)

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GENERAL COUNSEL'S EXHIBIT No. 8

October 22, 1954.

California Date Growers Association,  
Corner Highway 99 and King Streets,  
Indio, California.

Gentlemen:

Under date of October 21, 1954, Mr. George A. Yager, Acting Regional Director for the Twenty-first Region of the National Labor Relations Board, certified the United Packinghouse Workers of America, Local #78, CIO.

(Testimony of John Janosco.)

The Certification provides that our Union is the exclusive representative of all the Employees in the Unit as set out in the consent election agreement. Therefore, we request that a meeting be set for November 8, 1954 at 10:00 a.m. in your office in Indio for the purpose of discussing rates of pay, hours of work, seniority, vacations, and other conditions of employment. We are prepared to discuss same with the view in mind of reaching a signed agreement.

I trust we can reach an understanding that will provide stable employer-employee relationship. An immediate answer to this communication at your earliest convenience will be appreciated.

Yours truly,

JOHN JANOSCO,

Field Representative, United  
Packinghouse Workers of  
America, CIO.

JJ:l

cc: H. Hinejosa

Special Delivery Receipt Requested

Admitted in evidence January 10, 1956.

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Trial Examiner: I believe it is your position that the union was not properly certified, therefore, you had no duty to bargain following that certifica-

(Testimony of John Janosco.)

tion, and, in fact, did not bargain. Is that your position?

Mr. Babbage: That is right, sir. [98]

\* \* \*

### FLORENCE E. HAWKINS

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

\* \* \*

By Mr. O'Brien:

Q. I show you General Counsel's Exhibit 16 for identification. Did you prepare that list?

A. Yes, sir.

Q. Does it contain the names of all persons hired for the 1954-55 season, whose names did not appear on the March 18th, 1954 list?

A. I would say that it did, yes, sir.

Q. So General Counsel's Exhibit 16 and the March 18th, 1954, list together would show all the names which show on the large hiring chart for 1954-55?

A. I believe that's correct. [110A]

\* \* \*

Q. And it is your testimony that all of these people filed new applications in the fall of 1954?

A. Yes, sir.

Q. That is, all the people whose names appear on General Counsel's Exhibit 16?

A. Yes.

(Testimony of Florence E. Hawkins.)

\* \* \*

Q. (By Mr. O'Brien): Now, in General Counsel's Exhibit 17 entitled "List of 1954-55 Applicants not Hired," did you prepare that list?

A. Yes, sir.

Q. To the best of your knowledge, does it contain the names of all the persons who filed written applications for work in the fall of 1954, who were not hired? A. I believe it did.

Q. If someone just came in and inquired about work but did not file a written application, her name would not appear on that?

A. They are not taken into consideration, no. [112]

\* \* \*

Mr. O'Brien: The problem in this case is to ascertain the limits of that group. It has been made very easy for us here by the respondent itself. The respondent, when it signed this consent election agreement, said in effect, "The people who have a reasonable expectancy of future employment are as follows."

If these people had not had a reasonable expectancy of future employment, they should not have been permitted to vote. They are and they were the company's employees. They included all persons on Miss Hawkins' revised seniority list. They included all persons hired during the strike, and that is all they included. That group remained constant.

On that group, as will appear from the Regional



Director's report, appear the names of certain men on the seniority list who were specifically replaced. As to those men who were specifically replaced, specifically disenfranchised, the company owed no further obligation to them.

Trial Examiner: What list is that, Mr. O'Brien? Will you refer to the transcript and be specific by exhibit number?

Mr. O'Brien: I am referring specifically to General [140] Counsel's Exhibit 2-O, the seniority list of the 1953-54 season. Under "Men" you will note that Albert Esquer—

Trial Examiner: Now, just a moment. What page of 2-O is that?

Mr. O'Brien: It is the final page the way the original is assembled.

Trial Examiner: Yes, sir.

Mr. O'Brien: Albert Esquer was replaced by Albert Porter on December 2, 1953. That was one job, Albert Esquer's job. He was replaced by Mr. Porter.

Trial Examiner: I follow that, and I also see that there are other similar notations on that page.

Mr. O'Brien: Seven similar replacements. Now, seven replacements is all there were, there were no others.

Trial Examiner: That is all this exhibit shows, at any rate, is that correct?

Mr. O'Brien: At that particular point. If there had been any other employees on the 1952-53 seniority list who had been replaced, it was the obligation of the respondent to call it to the attention of the

Regional Director or his agent prior to the election or at the election. It did not do so.

Trial Examiner: What is your response to that, Mr. Babbage.

Mr. Babbage: Well, I don't know that we claimed that anyone else was replaced.

Trial Examiner: Well, if you don't, why, that takes care [141] of the replacements then, in that case, doesn't it?

Mr. Babbage: That's right. [142]

\* \* \*

### FLORENCE E. HAWKINS

witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. O'Brien:

Q. Miss Hawkins, we may have been over this before, but does General Counsel's Exhibit 2-O represent all the employees who had acquired seniority by December the 8th of 1953—I mean December the 1st of 1953, the day the strike started?

A. May I make my answer this way? It appears to be a list of the employees covered by the 52-53 seniority list and seems to have notations of those who were not even in the 52-53 season. Whether or not it is a complete list of those with seniority as of 12-8, without checking the employees working in 52-53 who had put in 12 weeks, that I cannot say.

(Testimony of Florence E. Hawkins.)

Mr. Babbage: Well, we can stipulate that it is the seniority list.

Mr. O'Brien: But I want to establish that it is the seniority list as of December 1, 1953.

Mr. Babbage: Yes, we can so stipulate.

The Witness: It appears to be.

Q. (By Mr. O'Brien): Now, in addition to the employees named on that seniority list, there were other employees without seniority before the strike started? [157]      A. Yes.

Q. And some of the employees——

Trial Examiner: I take it that means newly hired employees during that season?

The Witness: That is correct.

Q. (By Mr. O'Brien): And some employees without seniority went on strike?

A. Yes, sir.

Mr. O'Brien: Now, with those we are not concerned, I want to make that very plain. [158]

\* \* \*

Mr. O'Brien: I shall now read off the names of graders whose names appear on General Counsel's 2-O who were returned to work on December 10th. I shall ask the witness whether or not each one, after I finish, went on strike.

LaVerde Miller; Bonnie Johnson; Florence Schults; Pearl Johnson; Carmen Sandoval; Nevay Carter; Mildred Moore; Edith Wyrick; Rosa Pizano; Nora Edwards; Marie Ellis.

Trial Examiner: The question for the witness is:

(Testimony of Florence E. Hawkins.)

Did all those named persons go on strike, if you know?

The Witness: And I would like to make a statement in connection with my answer. All my testimony up to the present time has been in regard to facts and exhibits that I prepared on facts and records that I tried as close as possible to keep accurate. There is absolutely nothing in my records where I could honestly say these people went out on strike or left for any other reason. I cannot honestly say that. [159]

Q. (By Mr. O'Brien): Can you honestly say that they did not work during the week of December 1st to December the 8th, 1953?

A. I can say that they came in on December the 1st and went out at 10:00 o'clock and did not return.

Q. Then that would be true of the remainder of these names which I am going to ask, these individuals came in at 10:00 o'clock on December 1st and walked out and did not report again until December the 8th or 9th, is that right?

A. December the 10th.

Trial Examiner: The question is: Has he correctly stated the facts?

The Witness: They came in on the morning of the 1st, walked out at rest period, at 10:00 o'clock and did not return to work until December the 10th.

Q. (By Mr. O'Brien): And you were saying you don't know whether they were strikers or whether they just decided to be sick?

(Testimony of Florence E. Hawkins.)

A. That's correct. [160]

\* \* \*

Mr. Babbage: May I ask that the list from which the witness is testifying be identified as exhibits for the purpose of the record?

Mr. O'Brien: They are my own notes here, and I'd be very happy to have copies made of these for everyone, since she is using them to——

Mr. Babbage: Do you have any objection to identifying them as an exhibit for identification?

Mr. O'Brien: Not at all. I would be very happy to.

Mr. Babbage: Whether or not they can be introduced is another question, but at least we will have them for identification.

Mr. O'Brien: At least you will know what you are talking about.

Mark these as General Counsel's Exhibit 18-A through 18-I. [161]

\* \* \*

Mr. O'Brien: General Counsel's Exhibit No. 18-A is my note sheet entitled "Graders Returned December 10th, 1953, after Strike."

General Counsel's Exhibit B is a note sheet entitled "Graders Returned in Fall of 1954 without Seniority."

Q. (By Mr. O'Brien): Now, my question with regard to General Counsel's 18-B is the same as with regard to 18-A: Did each one of those individuals leave on September the 1st and return on September the 10th?



(Testimony of Florence E. Hawkins.)

A. December 1st and December 10th.

Q. December 1st and December 10th?

A. That's correct—no, not these. 'They didn't return until the following fall.

Q. They didn't return to work, but these would be among the group that signed that availability slip?

A. Well, they probably did, yes, sir.

Q. At least, they did not work during the 1954 season, the 1954 spring season, none of them did?

A. No, sir.

Q. These names are Iona Hollenbeck, Grace Martin, Mary Velasquez, Jane Harlan, Helen Misenheimer, Mary Ellen Glass, Grace Young, Iva Webster, Constance Moore Wilson, Grace Toby, Renvy Roman and Mable Puckett. [162]

A. Yes.

\* \* \*

Q. (By Mr. O'Brien): Miss Hawkins, were they returned as new employees? A. Yes, sir.

\* \* \*

Q. (By Mr. O'Brien): Are these individuals who ceased work on December the 1st and did not work any more during the 1953-54 season?

A. Yes, sir. [164]

\* \* \*

Q. (By Mr. O'Brien): I ask you to look at General Counsel's Exhibit 1-C—

Mr. Babbage: What is it?

Mr. O'Brien: The caption I have on that is "Graders Not Returned."

(Testimony of Florence E. Hawkins.)

Q. (By Mr. O'Brien): Miss Hawkins, did you check the figures in my first and second columns against any exhibits? A. No, sir.

Q. But you did check the names that I listed?

A. Yes, sir.

Q. And what check did you make of those names?

A. They were not hired during the 54-55 season. [166]

\* \* \*

Mr. Babbage: That is a copy of Exhibit 18-C for identification.

Trial Examiner: For identification only.

Mr. Babbage: For identification.

Trial Examiner: All right. Thank you. [167]

Mr. O'Brien: The first column indicates the seniority date taken from the 1953-54 hiring list. The second column indicates the seniority number taken from the seniority list which was used in the election. The third column is a list of names, the name of the individual appearing on the 1953-54 hiring list, appearing on General Counsel's Exhibit 2-O which is the seniority list used at the election, not appearing on the March 18th list, not appearing on the list of employees hired in 1954-55.

Q. (By Mr. O'Brien): Can you tell us, Miss Hawkins, why their names did not appear on the March 18th list? A. Yes, sir.

Q. What was the reason?

A. In the case of Antonio Delgado, she was given a referral card to take the——

(Testimony of Florence E. Hawkins.)

Q. I am talking about the March 18th list, General Counsel's Exhibit No. 4 was the one I referred to.

A. And why they did not appear on that list?

Q. Yes, why they did not appear on that list.

A. They did not work after December 1st.

Q. That is, no one who did not work after December 1st, 1953, got her name on the March 18th, 1954, list, is that right?

A. That's correct.

Mr. O'Brien: And, of course, it is the contention of the General Counsel that these individuals named in General [168] Counsel's Exhibit 18-C were employees whose names should have been included on the March 18th list.

Trial Examiner: When you say "these persons," you are referring to the persons appearing——

Mr. O'Brien: On General Counsel's Exhibit 18-C for identification.

General Counsel's Exhibit 18-D is my work sheet entitled "Packers Returned January 18, 1954." The first column indicates the seniority date from the 1953-54 hiring list. The second column is a list of names. The third column is the employees' seniority number on General Counsel's Exhibit 2-O, and the fourth column is the employees' number on General Counsel's Exhibit No. 4. In the broad section there is a notation—a few dates indicating the dates on which these individuals were hired in the fall of 1954. That comes from the 1954 hiring list.

These packers returned on January 18th, 1954,

(Testimony of Florence E. Hawkins.)

are, of course, in the same position as the graders returned on December 10th, 1953.

General Counsel's Exhibit 18-E for identification is entitled "Packers Returned in Fall of 1954 without Seniority."

The first column shows the date of their employment as shown by the hiring list of 1953-54. The second column is their seniority number as shown in General Counsel's Exhibit 2-O. The third column is the name. The fourth column is the [169] date on which they returned to work in the fall of 1954.

Q. (By Mr. O'Brien): Miss Hawkins, with regard to General Counsel's Exhibit 18-E, can you tell us why these names are not included on General Counsel's Exhibit 4?

A. They did not work, either.

Q. After the 1st of December, 1953?

Trial Examiner: I suppose you want the record to carry the witness' testimony. You made a statement, but I didn't hear the witness' answer.

The Witness: No, sir.

Q. (By Mr. O'Brien): They did not work after December the 1st, 1953, is that right?

A. That's right. [170]

\* \* \*

Q. (By Mr. O'Brien): Miss Hawkins, with regard to all of these summaries, General Counsel's Exhibits 18-A through 18-I, did all of those employees cease work on December the 1st, 1953?

Trial Examiner: You understand, Miss Haw-

(Testimony of Florence E. Hawkins.)

kins, when he says "cease work," that implies that they were working up to that time?

Mr. O'Brien: Yes.

The Witness: Well, sir, I would have to check the '53-'54 hiring list before I can answer definitely because some of these names—I don't recall that they were hired in the '53-'54 season.

Q. (By Mr. O'Brien): On Duane Ellis, [171] '53-'54——

A. He did not work in the '53-'54 season.

Q. You notice here that it indicates his date of employment as October the 8th, 1953. I think that "Working elsewhere this season" applies to Mr. Robert——

A. I guess he did work in '53.

Q. I attempted to make that check.

A. I can't remember, and, as I say, it seems some of those—I doubted whether they were in. After all, it is quite awhile for me to remember definitely whether that certain employee was in, but if you have checked him with my hiring list, and you are sure that it shows a hiring date, then I can say that they did not work after December 1st.

Mr. Babbage: I move that answer be stricken on the ground that it is not the witness'——

Trial Examiner: Well, it is based on an assumption of the General Counsel's compilations, so unless the respondent wishes to accept that as accurate, why, I don't think the answer has any particular meaning, Mr. O'Brien. I presume that you have a record in here that shows as to each of these names



(Testimony of Florence E. Hawkins.)

whether or not that particular person was at work as of December 1st. Do you?

Mr. O'Brien: When you look at the 1953-54 hiring record, which is General Counsel's Exhibit 3, the third column indicates a date on which the individual started to work.

Miss Hawkins, is that true? [172]

The Witness: That particular year?

Mr. O'Brien: That particular year, yes.

The Witness: Yes, sir.

Q. (By Mr. O'Brien): And if the individual quit for any reason before the strike, there would be a notation in the following column "Quits Before Strike," is that right? A. That's right.

Q. So if the individual's name appears in the first column, and there is no notation under the item "Quits Before Strike," it indicates that the individual was working on the day the strike started?

A. That should be correct.

Q. With regard to General Counsel's Exhibit 18-F for identification——

Mr. Babbage: If the Examiner please, this copy is as close as we can make it a true copy. We had to make it by hand.

Trial Examiner: All right. Thank you.

Mr. O'Brien: Again the first column indicates the seniority from the seniority list in the '53-'54 hiring record. The second column indicates the seniority number from General Counsel's Exhibit 2-O, and the third column is the name. In the final column headed "Application," the date 9-7, indicates

(Testimony of Florence E. Hawkins.)

that Miss Hawkins has a record of an application which is in General Counsel's—off the record.

(Discussion off the record.) [173]

Trial Examiner: On the record.

Mr. O'Brien: General Counsel's Exhibit 17, indicates that Mayme Ruby, for instance, filed an application on September the 7th. Where the word "No" appears under the word "Application," I found no record of an application in General Counsel's Exhibit 17.

General Counsel's Exhibit 18-G for identification entitled, "Men Returned January 18, 1954," the first column shows the seniority date; the second column the seniority number from General Counsel's Exhibit 2-O; the third column shows the number on the March 18th, 1954, list, their position on that list.

General Counsel's Exhibit 18-H entitled, "Men Returned in Fall of 1954 without Seniority," the first column indicates the seniority date, the second column indicates the seniority number from General Counsel's Exhibit 2-O, the third column is the name, and the fourth column is the date on which they were returned to employment in the fall of 1954.

As General Counsel's Exhibit 18-I entitled, "Men not Recalled," the first column indicates the seniority date; the second column the seniority number; the third, the name; and the final column shows that apparently none of those individuals filed written applications as evidenced by General Counsel's Exhibit 17.

(Testimony of Florence E. Hawkins.)

I offer General Counsel's Exhibits 18-A through 18-I as a [174] summary of the facts shown by the documents received in evidence which I have indicated and is nearly as complete a list as I can compile of individuals who suffered some degree of discrimination in employment by virtue of the fact that the employer abandoned its 1952-53 seniority policy in favor of a policy based on its March 18th, 1953, list. [175]

\* \* \*

Trial Examiner: Do you want to state a position on whether or not I should receive these summaries or not?

Mr. Babbage: Well, my position on the motion to dismiss is that I object to the introduction of the evidence.

Trial Examiner: I understand.

Mr. Babbage: A running objection.

Trial Examiner: I think we understand that you have a continuing objection to anything that Mr. O'Brien brings in because of his statement that he had rested. Further than that, though, do you have any special objection to receipt of these summaries?

Mr. Babbage: No, I haven't.

Mr. O'Brien: They are not evidence. I wouldn't—

Trial Examiner: They are not evidence except to the extent that the witness has testified to them.

Mr. O'Brien: That is right, but I do hope that they will be helpful. I put a lot of time in on them.

Trial Examiner: Well, as an index to the ex-

(Testimony of Florence E. Hawkins.)

hibits stating the General Counsel's position, I should like to have them and I will receive them in evidence. [177]

\* \* \*

Q. (By Mr. O'Brien): If you will look at your 1954-55 hiring list, you will notice it shows layoffs, temporary lay offs. When was the first temporary lay off on that list? I think it was December, wasn't it, just before Christmas?

A. Well, that was the Christmas lay off, but I believe you will find there was a layoff previous to that one.

Q. I don't mean individuals. I mean group lay offs.

A. I believe our night shift was cut off sooner than that.

Q. Anyway, the persons selected for that group layoff were selected how, if you know?

A. I do not know, because it was handled—the Christmas lay off from 12-22, to 1-3, was the plant closed down for the holidays. When you refer to the night lay off, that was the night deal that was discontinued. Other temporary lay offs that might be listed on here, I don't know how they did that. That was done in the packing department.

Trial Examiner: What is this, the 1954 season that you are talking about?

The Witness: '54-'55. [178]

Q. (By Mr. O'Brien): Do your records indicate that in the case of these lay offs, the people on the March 18th list were the last ones laid off?

(Testimony of Florence E. Hawkins.)

A. I will say that as far as the permanent lay off, it would show that, yes, sir. [179]

\* \* \*

JAMES F. WRIGHT

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Babbage:

Q. Mr. Wright, what is your position?

A. I am general manager of the California Date Growers Association.

Q. And how long have you been so employed?

A. Approximately five years.

\* \* \*

Q. (By Mr. Babbage): Now, at the time that you were first employed as general manager of the California Date Growers Association, was there a union representing the employees?

A. No, there wasn't.

Q. Could you give us the time and the circumstances with respect to when a union first represented the employees of this Association?

A. There was some contact with the union during the month of November, in 1951, and some meetings were held with union representatives and members of the National Labor Relations Board in Los Angeles, and a consent election was agreed [190]



(Testimony of James F. Wright.)

upon and signed and an election was held on, I believe, the 17th of December, 1951.

Mr. O'Brien: Mr. Babbage, I have the file on Case No. 21-RC-2274 to which Mr. Wright is referring there. If there are any significant dates you want in, why, I'd be glad to supply them.

Mr. Babbage: Fine. Actually my purpose is to merely give the Examiner a general picture of the situation and I don't know that the dates are pertinent at this particular phase of the examination.

Mr. O'Brien: I just want you to know that it is available here.

Mr. Babbage: I appreciate having it available.

Q. (By Mr. Babbage): Do you recall what the vote was in the original consent election in this matter?

Mr. O'Brien: That is a matter of official record which I have right here. The tally of ballots issued December 17, 1951, in 21-RC-2274 shows:

Approximate number of eligible voters: 320.

Void ballots: 3.

Votes cast for United Fresh Fruit and Vegetable Workers, LIU 78, CIO: 158.

Votes cast against participating labor organization: 127.

Valid votes counted: 285.

Challenged ballots: 2. [191]

Valid votes counted plus challenged ballots: 287.

A majority of the valid votes has been cast for United Fresh Fruit and Vegetable Workers, LIU 78, CIO.

(Testimony of James F. Wright.)

Paul J. Driscoll signed for the Regional Director; Bertha Adams signed for United Fresh Fruit and Vegetable Workers LIU 78, and Helen Kriessel signed for the California Date Growers Association.

The Witness: I recall that as right. As I recall, if five per cent of the people, approximately, had voted different, it would have been a tie or one way or the other, I don't remember.

Q. (By Mr. Babbage): After this election, did you enter into negotiation with the union for the purpose of agreeing on a contract?

A. Yes, we did, and started negotiations right after the first of the year in '52.

Q. And did you enter into a contract with the United Fresh Fruit and Vegetable Workers as the exclusive agent of your employees?

A. Yes, we did.

Q. Do you remember the approximate period during which that contract was in effect, in other words, do you remember when it became effective?

Mr. O'Brien: I think that is set forth in the complaint and admitted in the answer. [192]

The Witness: As I recall, the contract was entered into in October of '52, and it had covered from August of '52 until July 1st of 1953.

Q. (By Mr. Babbage): Now, did you enter into negotiations with the United Fresh Fruit and Vegetable Workers toward the end of that contract period, let us say, during the summer of 1953, for the purpose of negotiating a new contract?

A. As I recall, our negotiations started a month

(Testimony of James F. Wright.)

prior to the expiration of the contract, so that would be in June of '53. [193]

\* \* \*

Q. Now, on or about the 1st of December, 1953, a number of the employees left your plant, is that right?

A. That's correct.

Q. Now, during that period were you in operation in the plant?

A. Yes. We continued operation December 1st, the balance of that week, and to the next week, until we were advised by telegram from the union that the employees were returning to work.

Q. Now, during the period that you were in operation, did you have any conversations with the employees either directly or through representatives with respect to the status of the employees who remained and the status of employees who were employed and the status of employees who would come back to work?

A. Yes. I was in, you might say, constant touch with the employees during this period. In fact, I used to pick them up—quite a few of them up and escort them into work every morning, and was in contact not only with the employees who remained during the strike and those who were hired during the strike, and also the ones that returned to work during the strike.

Q. What was your position with respect to the status of these various classes of employees that I have mentioned, that is, those who remained work-

(Testimony of James F. Wright.)

ing during the strike, those who returned to work during the strike, and those who were employed during the strike as new employees for work that you had to have [194] done?

\* \* \*

Q. (By Mr. Babbage): What did you do with respect to the employees that I have described here?

A. Well, as would be natural under a trying situation, the employees would be concerned with their job security, and I assured them at the time that those who had remained through the strike, the replacements and the people who returned, that they would be—had become and would be treated as the nucleus of our work force; that we didn't know how long the strike would go on; that we intended to continue to operate the plant and receive and grade and pack and ship our dates, and that these people we felt were a necessary part of our business; and that I gave them the assurance that they would be maintained if and when the strike was terminated.

Q. Did any employee or group of employees ask you what your position was before they would come to work for you during this time, during the strike period? [195]

Trial Examiner: You are referring to the group that remained at work now?

Mr. Babbage: I am referring to new employees that came in during the strike.

The Witness: Myself personally, I may have

(Testimony of James F. Wright.)

had some direct contact with them at the time of coming in—I do not recall right now—but this policy of assuring the people security was known by the other supervisory people in the plant who were more closely in contact with the hiring of people during the strike, namely, Mr. Yowell, the plant manager, who had a great deal to do with the—a great deal of contact with the people when hired, but after they were hired is when I had my contact with them. [196]

\* \* \*

### Cross-Examination

By Mr. O'Brien:

Q. Did you talk to any of the strikers who returned to work after December the 10th about their status?

A. Are you referring to the January 18th—

Q. Well, there were some returned on December the 10th. The packers returned on December 10th, and the men— [198]

A. The graders.

Q. Rather, the graders returned on December the 10th—the graders went back first, then the packers, and the men returned on January 18th.

A. That is right.

Q. Did you have any conversation with any of them about this policy that you just described to Mr. Babbage?

A. With the people that came back December 10th, I talked to those people, some of those people, in case I had some occasion to during the day. With regard to this policy that I spoke of with Mr. Bab-



(Testimony of James F. Wright.)

bage, I didn't. I was out of Indio during January to a convention back east, and I wasn't there when the people returned on January 18th.

Q. Was your new policy placed in writing in any way?

A. Not in any writing other than the preparation of the list.

Q. That is this March 18th list which Florence prepared sometime after the close of the season? Is that the only writing?

A. I don't remember the exact date that the March—that has a March 18th date on it. When that list was prepared, I'm not sure.

Q. What I am asking about is whether there was any written notice to the employees that those who worked during the strike would receive deferred treatment in the future?

A. There was no written notice of the policy that I [199] described. The supervisory personnel in the plant were all advised and aware of it.

Q. By the supervisory personnel, you mean Mr. Yowell?

A. Well, Mr. Yowell, Mr. Cawthon, Faye Gillespie, Effie Gray, Henry Villa, Mr. Buzard. They are supervisory personnel through the plant.

Q. Did you tell Miss Hawkins about the policy?

A. She was advised of it. When and by whom I'm not sure, but she would have—she was advised of the policy, and if I may refer to some records here, I think I can tell you. Chances are, if she hadn't known earlier, she would have known some-

(Testimony of James F. Wright.)

time in February, '54. I'm not sure when she was advised.

Q. Do you know how long the seniority list remained posted in the plant?

A. Truthfully, I don't know.

Q. You don't know whether it was still up after the strike or not?

A. I would be guessing if I knew—if I said I knew I would be guessing, is what I mean. I do recall that some of the notices were taken off the union bulletin board by the employees during the strike. Whether the seniority list was taken off then, I don't know.

Q. Anyway, you know that somewhere along the line it has disappeared, and it wasn't removed at your instructions?      A. No. [200]

Q. And since that seniority list, have you ever posted any seniority or priority list which would indicate to the employees how they stood in job opportunities?

A. They were advised, Mr. O'Brien, but I don't think that a list was posted.

Q. That is, you don't think there was ever any written memorandum evidencing this policy which you described to give preference to people who worked during the strike?

A. I don't think so.

Q. Are you pretty sure that you did not tell any of the returned strikers that they had lost seniority by reason of the fact that some people had continued to work during the strike and they had not?

(Testimony of James F. Wright.)

A. I didn't personally. One of the problems after a strike when you have people come back, you have the problem of trying to rebuild a co-ordination between some people who are out and some people that were in, and it isn't too good business policy to agitate that situation at the time they return. You are interested in business continuing.

Q. Anyway, what it comes down to is this, then: That when some of these people that worked during the strike came to you personally and wanted personal assurance that they would be taken care of after the strike, you gave it to them?

A. That's right.

Q. And that is about all it amounted to? [201]

A. Well, you say that is about all. It was a pretty important thing for the people——

Q. It is very important to a girl who had no seniority and was working during the strike and wondered what would happen to her job when seniority employees offered to come back. I understand that. But I want to know whether your publication of your determination to protect these people went any farther than individual assurances.

A. I believe, Mr. O'Brien, that I talked—well, I know that during the strike I would talk to the working force that was there every day, and this was one of the primary things these people were concerned about, so I am sure they were advised of it in meetings of all the people who were at the plant. As I recall, I met—I had met with the graders and the people in that area of the plant in one

(Testimony of James F. Wright.)

meeting, and met with the packers and the people in the pitting department in that area of the plant at another meeting, but that was a daily occasion during the strike.

Q. That was to encourage them to get out production, let them know you were with them, is that it?

A. Well, it covered a lot of things.

Trial Examiner: Mr. Wright, do you have any distinct recollection whether, during any of these meetings that you had with the employees during the strike, whether you specifically mentioned the matter of their security to them? [202] Do you have a recollection of it?

The Witness: Yes, I do.

Q. (By Mr. O'Brien): I call your attention to Page 68 of the transcript of the Indio hearing, which is General Counsel's Exhibit 2-KK. These are questions by Mr. Janosco:

"Isn't it true that when they applied for jobs they were advised that their seniority would begin as of that date?"

And your answer was, "I don't know."

Do you recall that testimony now, Mr. Wright?

A. Yes.

Q. Then further on Mr. Janosco asks:

"Isn't it true that they were starting as new employees with a 15 cent an hour cut in wages?"

And your answer was, "They were hired back. There was no question raised, to the best of my knowledge, which said they were new employees or



(Testimony of James F. Wright.)

that they were not. They were told there was a job and they were asked to come back to work. The same thing is true in the grading department, when some nine or ten girls were hired back into the jobs that were available."

And further on Page 69: "In other words, the workers were not advised that they were losing seniority or they were not taking a cut in wages?"

"A. No. Actually, with regard to the seniority, to the best of my knowledge, they were not advised.

"Q. Starting as new employees and losing their seniority, [203] also?

"A. As far as I know, they were not advised of that, and I gave no instructions to that effect."

Is that still true now?

A. Yes. I think that was what I testified to here.

Q. Yes. I was reading your testimony.

A. I mean I testified to that a little earlier, too. [204]

\* \* \*

Trial Examiner: As I understood his testimony, he said that these people who worked on the night shift, when that night shift was discontinued yet people on the day shift continued to work, that those on the night shift would then know that something had happened to their standing on the priority or seniority list. That is the way I understood his testimony. [206]

The Witness: That is the way I meant it.

Q. (By Mr. O'Brien): That wouldn't neces-



(Testimony of James F. Wright.)

sarily be so, would it, because they were hired specifically for a night job, the night job is over, they wouldn't know that there had been any real change there in the seniority policies?

A. Well, in the past, Mr. O'Brien, if a person had worked nights and the night shift was not called for any more, and laid off, those people who had worked nights, if they were higher in seniority than those in the day shift, they would have come back to work on the day shift and people further down on the seniority list would have been laid off.

Q. Oh, I see. If you had been applying your seniority policy when these girls were laid off on the night shift, they would have been able to bump the people that were hired during the strike, and people who worked during the strike without seniority, is that right?

A. If there hadn't been any strike, and we had had the night shift, and those people had worked on nights and with higher seniority, they would have bumped people on the day shift, that's right.

Q. Was that an old policy of the company before you had a union?

A. I think the testimony in here states that that policy had been in existence. [207]

\* \* \*

Q. That reminds me of something else. You were testifying about a priority list, and Mr. Janosco examined it, and you examined it, and you studied there for a long time, and then nothing happened.

(Testimony of James F. Wright.)

I am asking you now whether, on the priority list that you had, were the names from that carried over into the first seniority list which we have in evidence here, do you remember?

A. You are referring to a priority list prior to——

Q. The priority list you testified about in Indio, the seniority list.

A. I feel very sure, Mr. O'Brien, that they by and large did. There was a great deal of problem in establishing a seniority list, there was a lot of work that Florence and her people went through in obtaining it, and we got one list, and then there were—that was turned down, and we got—we then sat down with Mr. Moorhead and agreed upon a way to draw up the list, and that was brought to the union meeting, and that was turned down, and it derived back to the original list, so I think by and large that would be most likely true. [210]

Q. So that the company's own priority list formed the basis for the seniority list which found its way into the contract with all these hassles and refinements?

A. Well, with some exception, Mr. O'Brien, in that the contract specified twelve weeks employment, and it might have had some effect upon the previous priority list.

Q. And your priority list was used to recall employees from one year to the next?

A. That is right.

\* \* \*

(Testimony of James F. Wright.)

Trial Examiner: On these persons that you hired during the strike, did you have any personal interviews with any of them that you recall?

The Witness: Personal interview before hiring?

Trial Examiner: Yes. Yourself.

The Witness: No, I didn't.

Trial Examiner: Had you issued any instructions as to what [211] was to be said to them with reference to security?

The Witness: No.

Trial Examiner: Well, the question is: Do you recall?

The Witness: No, I don't recall. All I recall on this instance, Mr. Examiner, is the daily meeting of personal contact in the plant.

\* \* \*

### Redirect Examination

\* \* \*

By Mr. Babbage:

Q. Mr. Wright, there is one point that I would like to clarify with a few questions, and that is with respect to the employees who were not working at the conclusion of the strike; as those employees were recalled for work as work became available, what policy did you follow and in what order did you call those employees in? [215]

A. At the conclusion of the strike we put into effect the policy, and have followed it since, that in calling back to work additional people other than those employed as of December 8th, we followed the

(Testimony of James F. Wright.)

1952-53 seniority list, I think as evidenced in the first ten people called back in grading on December 10th, 1953, and the method we followed in January of 1953, in calling the people for the night shift, we started with the 52-53 seniority list and went down that list to call in the people who were not working. Again in September of 1954, after we had hired the people who are on the March 18th list, the additional people that were called in, we again went down the 1952-1953 seniority list as the method of calling them in.

Q. So that within the group of all of those people who were recalled for employment after the strike, you followed that seniority without any deviation?

A. Without any deviation, that is right. [216]

\* \* \*

Q. (By Mr. Babbage): Mr. Wright, I would like to direct your attention to Exhibit 2 of the General Counsel and to Subsection YY, the supplemental report on challenges of the Regional Director, dated the 5th day of October, 1954. I would also like to direct your attention to General Counsel's Exhibits 18-E and 18-F.

Now, by referring to those three exhibits, Mr. Wright, will you tell me which of the twelve employees, if any, whose names are set forth in Exhibit 2-YY of the General Counsel, ever applied for work at the California Date Growers Association after they refused employment in January, 1954?

(Testimony of James F. Wright.)

A. If it is all right with Mr. O'Brien, may I put in an additional few check marks on here?

Kathryn White did——

Mr. O'Brien: Does that indicate she was employed?

The Witness: This date, I think she testified, was the hiring date, the date she went to work.

Q. (By Mr. Babbage): You better state the date. [231]

A. 2nd of September. Soccoro Romero on the 25th of October. In both cases, this was 1954. Pauline Skinner, September 2nd, 1954. Beryl Warren, September 2nd, 1954. Ellen Chester, September 2nd, 1954. Lucretia Dallosta on September 16th, 1954. Manuella Carrillo on September 17, 1954. There is a slight difference in spelling between the two, but I assume it is the same person.

Q. Is that all? A. Yes.

Q. Now, the other employees, Lillian Fieber, Florence Flores, Anna Gagnon, Lupe Quijadas and Mayme Ruby did not work for the company again, is that right?

A. That's correct. You are referring to this——

Q. Yes. Which of these five employees which I have just named, if any, applied for work in the 1954-55 season?

A. Well, Exhibit 18-F indicates that Mayme Ruby did, and that Lupe Quijadas did. It indicates that Anna Gagnon did not apply, Lillian Fieber did not apply, and Florence Flores did not apply.



(Testimony of James F. Wright.)

Q. In other words, there were three of those employees, then, that never applied for work again?

A. Yes. [232]

\* \* \*

Mr. Babbage: We are not in a position to say that there was or was not any impropriety in those proceedings from the Regional Director's standpoint, and by making that statement, I don't mean to infer that there was or that there wasn't.

However, our next offer of proof concerns the manner in which the ballots were counted in the Regional Director's office, and for that purpose, if the Trial Examiner will refer to Exhibit No. 2 of the General Counsel in which—— [239]

Mr. O'Brien: 2-HHH, I believe is what you want.

Mr. Babbage: In which there appears in Exhibit 2-HHH and 2-III a letter from me, together with a copy of objections to conduct affecting results of the election, which letter and which copy of the objections states what occurred at that time, and Exhibit 2-JJJ, which is the Regional Director's explanation of what occurred at that time, we are prepared to offer additional—or we are prepared to offer proof on that point, but it appears to me that the statement of the objections and the response thereto by the Regional Director clearly state what occurred at that time with the possible exception that there was a—I believe that Mr. O'Brien, who was representing the General Counsel in this proceeding, also talked to Mr. Wright at

the time that Mr. Wright was in the office on that occasion. Do you recall that?

Mr. O'Brien: I have no recollection of it whatsoever.

Mr. Babbage: Well, we can take testimony on that point.

Mr. O'Brien: I wouldn't deny it. If he says he talked to me, he did, there is no doubt about that.

Trial Examiner: Well, now, these matters were called to the attention of the Regional Director prior to the time he made a certification?

Mr. Babbage: Yes. These matters were called to the attention of the Regional Director—no—I withdraw that. You will note from the file that the certification was dated [240] October 21, 1954; that the occasion on which the ballots were counted was on October 19th, 1954, which was only two days before. The objections that I filed with the Regional Director bear the Regional Director's—correction—bear the received stamp of the National Labor Relations Board office in Los Angeles October 26th, so the objections I made to the certification of the Regional Director because of the conduct affecting the results of the election were obviously not known to him until after he had made his certification.

Mr. O'Brien: I am not sure whether this appears in that exchange of correspondence, but—you did finally get into our office on the 19th, didn't you, John?

Mr. Babbage: Oh, yes, but it was after the ballots had been tallied.

Mr. O'Brien: That is all in there, though?

Mr. Babbage: Yes. [241]

\* \* \*

JAMES F. WRIGHT

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Trial Examiner: Mr. Wright, you know you are still testifying under oath?

The Witness: Yes, sir.

By Mr. Babbage:

Q. Mr. Wright, I call your attention to General Counsel's Exhibits 2-HHH, 2-III and 2-JJJ and ask you if you have read those exhibits?

A. Yes, I have.

Q. Do those exhibits from the standpoint that they state what you did or did not do on the occasion which they describe correctly state the situation?

A. Reasonably well, counsel. They——

Q. Is there an additional factor that occurred at that time which is not included in any of those exhibits?

A. Well, if it is all right, I will just review, as most of it is stated here.

The hearing was scheduled for 2:00 o'clock, and I arrived there before 2:00——

Trial Examiner: Now, what kind of hearing is this? [243]

(Testimony of James F. Wright.)

The Witness: I shouldn't have said hearing. The meeting for counting of the ballots was scheduled at 2:00 o'clock at the National Labor Relations Board in Los Angeles.

Trial Examiner: Counting of the challenged ballots?

The Witness: That's right.

Mr. Babbage: May I interrupt the witness for a moment? I would like for the Trial Examiner to know, and the record to show, that our defense on this issue does not include an allegation that there was any miscounting, or that there was any failure on the part of any of the Board representatives to do whatever was honest and correct in connection with the actual counting of the ballots. Our defense goes to the method by which they proceeded, and the fact that a representative of the employer was present and he had been in the office of the Board and that he was not brought into the room where the ballots were counted and tallied, but that representatives of the union were.

Trial Examiner: Well, that makes your position clear.

Mr. Babbage: All right. If you will proceed, Mr. Wright.

The Witness: Exhibit 2-JJJ states that I arrived at 1:45. That could be as close as I could recall, and it also states that I informed the receptionist that I—I asked the receptionist, rather, whether you, Mr. Babbage, had arrived, and that I was to meet him there, and she said that you hadn't



(Testimony of James F. Wright.)

arrived yet, so I commenced to wait for Mr. Babbage's arrival. [244]

As I recall it, in walking up and down the halls and about the receptionist's desk there, that I ran into Mr. O'Brien and as I recall the situation, he recognized me and I recognized him, but neither one of us could state at the time—could think of who the other person was, but we knew we had seen them, and he introduced himself as Mr. O'Brien and I Mr. Wright and then he recalled that we had met at the hearing at Indio the previous April. It was just a short meeting of that type, and then I stayed in the whereabouts there at the office until you arrived, and I think the record shows—Exhibit 2-JJJ shows you arrived at 2:30, and then we proceeded into Mr. Abrams' office, and he informed us that the ballots had been counted.

I think in the receptionist's office there is a telephone in the corner—

Mr. O'Brien: There is a pay telephone there. The government has a regulation, Mr. Wright, that I must not permit you to use my phone on any kind of business and I am forbidden to use my phone on anything except government business, so we have that pay 'phone out there. I apologize publicly to the world for that situation.

The Witness: Well, I used the pay 'phone to call our Los Angeles office and while I was in the 'phone booth—I presume it was somewhere around, shortly before you arrived I did see Mr. Janosco leave the office. [245]

I might state that one of the confusing matters



(Testimony of James F. Wright.)

may have been that I had not previously met Mr. Abrams and actually, from the receptionist's office there, at the time you can see—at least, his office at the time you could see very clearly from—and I did see Mr. Abrams in an office a short distance off, but I had never met him before, so I didn't know that he was the man who was to be counting the ballots. That is my best recollection.

Mr. Babbage: Do you wish to cross-examine?

Mr. O'Brien: I may have one question.

### Cross-Examination

By Mr. O'Brien:

Q. In Mr. Helbling's letter to you, had he told you who was going to count the ballots?

A. I am pretty sure we were advised Mr. Abrams was. Now, I could be wrong on that, but I think that was—I don't think Mr. Helbling was in the area.

Q. I don't remember, but I have nothing to add to this and I haven't read these exhibits recently.

Anyway, did you ask for Mr. Abrams when you went to the receptionist's desk?

A. No. The exhibit states the fact I asked the receptionist if Mr. Babbage was there, the best of my recollection now.

Q. And you say you saw Mr. Janosco. Did you speak to him?

A. No. I was in the telephone booth when he walked out. [246]

## JAMES F. WRIGHT

recalled as a witness, having been previously duly sworn, testified further as follows:

Trial Examiner: I believe there were twelve girls who were strikers, who, after the termination of the strike, were offered work on a night shift and who refused to take work on a night shift, that is correct, isn't it, Mr. Wright?

The Witness: That is correct. [250]

\* \* \*

Mr. Babbage: Well, if the Examiner is clear what the March 18th list represents with respect to these particular employees, or any other employees—perhaps it might be well at this point if you would state just what the March 18th list was, Mr. Wright.

The Witness: The March 18th list represented the people who worked during—from September 1st, to December 8th, plus the additional people on the seniority list who had been called back to work, only those who had been called back to work.

Trial Examiner: I so understood.

Mr. Babbage: Did you have any other opportunities, or did you have any opportunities for day work after January 16th, 1954, during that season?

The Witness: Where we would hire new employees?

Mr. Babbage: Yes.

The Witness: No.

Mr. O'Brien: So we may have the scope of this March 18th [257] list in one place—I am not concerned with the order in which the names appear,

(Testimony of James F. Wright.)

but the March 18th list included only employees who were actually working on March the 18th, that is true, is it not?

The Witness: Yes. Anyone who had quit after December 1st, I believe were dropped——

Mr. O'Brien: And it included only persons who had worked after December the 1st, that is, beginning December the 2nd—it did not include the name of anyone who did not work between December 1st and March 18th; anyone who did not work between December the 1st and March 18th, her name was not on the list?

The Witness: By December 1st, you mean starting at 10:05?

Mr. O'Brien: Starting at 10:05, yes.

The Witness: Yes, sir.

Mr. O'Brien: So anyone who was working on December 2nd or 3rd, through January or February, but had quit, her name would not be on the March 18th list?

The Witness: I believe that is right, I believe Miss Hawkins testified on that, and if I am in contradiction to her testimony, her testimony, the chances are, is right.

Mr. O'Brien: Well, the large chart there—the hiring list for 1953-54 shows hires during the week of—I am making this statement, and it is substantiated by the record—shows [258] hires between December the 1st, and December the 8th, and then opposite that name will appear the notation they quit on such and such a date, and that name does

(Testimony of James F. Wright.)

not appear on the March 18th list. Is that your recollection?

The Witness: That is my recollection. [259]

\* \* \*

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[Title of Court of Appeals and Cause]

### CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "California Date Growers Association and United Packinghouse Workers of America, AFL-CIO, Local Union No. 78," Case No. 21-CA-2130 before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Volume I—Exhibits Introduced in Evidence  
General Counsel's Exhibit No.

1-A Charge filed by Local Union No. 78, United Packinghouse Workers of America, CIO (herein called Charging Party) on December 13, 1954.

1-B Affidavit of service of a copy of the charge mailed December 14, 1954, together with United States Post Office return receipt thereof.

1-C First amended charge filed by charging party on January 5, 1955.

1-D Affidavit of service of first amended charge mailed on January 6, 1955, together with United States Post Office return receipt thereof.

1-E Complaint issued by Acting Regional Director on October 21, 1955.

1-F Notice of hearing issued by Acting Regional Director on October 21, 1955.

1-G Affidavit of service of notice of hearing, complaint and copies of charge mailed October 21, 1955, together with the United States Post Office return receipt thereof.

1-H Respondent's motion for extension of time for filing answer received November 1, 1955.

1-I Respondent's motion for extension of date of hearing received November 1, 1955.

1-J Order extending time for filing answer to complaint dated November 1, 1955.

1-K Order rescheduling hearing dated November 1, 1955.

1-L Affidavit of service of order rescheduling hearing and order extending time for filing answer to complaint, together with United States Post Office return receipt thereof.

1-M Respondent's motion for extension of time for filing answer received November 15, 1955.

1-N Affidavit of mailing of motion for extension



of time for filing answer sworn to November 14, 1955.

1-O Order extending time for filing answer to complaint dated November 15, 1955.

1-P Affidavit of service of order extending time for filing answer to complaint mailed November 15, 1955, together with United States Post Office return receipt thereof.

1-Q Respondent's answer to complaint received December 7, 1955.

1-R Affidavit of mailing of answer sworn to December 5, 1955.

1-S Notice of setting the place of hearing dated December 13, 1955.

1-T Affidavit of service of notice mailed December 13, 1955, together with United States Post Office return receipt thereof.

1-U Acting Regional Director's telegraphic order postponing the hearing dated January 5, 1956.

1-V First amended answer sworn to January 10, 1956.

2-A Petition in Case No. 21-RM-280 filed on December 9, 1953.

2-B Letter of December 10, 1953, from Respondent's attorney to N. L. R. B. enclosing telegram from Union.

2-C Telegram of December 8, 1953, from Union to Calif. Date Growers Assoc. offering to return members to work.

2-D Letter of December 10, 1953, from Field Examiner of the Board to Respondent's Counsel advising that Union refuses to consent to an election.

2-E Order consolidating cases and notice of representation hearing dated December 11, 1953.

2-F Affidavit of service of order consolidating cases and notice of hearing, copies of petitions mailed December 11, 1953, together with United States Post Office return receipt thereof.

2-G Order postponing hearing dated December 17, 1953.

2-H Affidavit of service of order postponing hearing mailed December 17, 1953, together with United States Post Office return receipt thereof.

2-I Field Examiner's Letter of January 5, 1954, to Respondent setting conference.

2-J Field Examiner's letter of January 22, 1954, to Respondent enclosing election agreements.

2-K Consent Election Agreement approved February 5, 1954.

2-L Field Examiner's letter of February 5, 1954, to California Date Growers Assoc. enclosing Notices of Election.

2-M Election Notice.

2-N List of Employees as per January 30, 1954.

2-O Seniority List 1953-54 Season.

2-P Tally of Ballots dated February 18, 1954.

2-Q Certification on Conduct of Election dated February 18, 1954.

2-R Field Examiner's letter of February 25, 1954, to California Date Growers Assoc. enclosing a compilation of challenged ballots.

2-S Compilation of challenged ballots.

2-T Affidavit of Florence Hawkins sworn to March 9, 1954.

2-U Notice of start of operations.

2-V Affidavit of Catherine White.

2-W Affidavit of Beryl Warren sworn to March 9, 1954.

2-X Respondent's letter of March 17, 1954 to Field Examiner.

2-Y Memorandum in Support of Employer's Challenges of Votes.

2-Z Report on Challenges dated March 24, 1954.

2-AA Field Examiner of the Board's letter of March 24, 1954, to Calif. Date Growers Assoc. transmitting report on challenges and setting date for conference.

2-BB Field Examiner's letter of March 29, 1954, to Respondent postponing conference.

2-CC Regional Director's letter of April 2, 1954, to Respondent extending time to file objections to report on challenged ballots.

2-DD Respondent's letter of April 7, 1954, to Field Examiner of the Board enclosing opposition to report on challenges.

2-EE Objections to Report on Challenges.

2-FF Petition for Hearing on Challenges, dated April 7, 1954.

2-GG Order Directing Hearing on Challenges, dated April 22, 1954.

2-HH Affidavit of Service of Order directing hearing on challenges mailed April 22, 1954, together with United States Post Office return receipt thereof.

2-II Order rescheduling Hearing dated April 23, 1954.

2-JJ Affidavit of Service of Order rescheduling

Hearing mailed April 23, 1954, together with United States Post Office return receipt thereof.

2-KK Transcript of hearing before George O'Brien April 29, 1954.

2-LL Union's Post Hearing Brief.

2-MM Respondent's letter of June 1, 1954, to Acting Regional Director transmitting post hearing brief.

2-NN Post Hearing Brief Re: Special Hearing on Certain Challenges dated May 28, 1954.

2-OO Acting Regional Director's letter of June 2, 1954, to United Fresh Fruit & Vegetable Wkrs. Local No. 78 transmitting copy of brief.

2-PP Field Examiner's letter of July 2, 1954 to Respondent requesting committee information.

2-QQ Respondent's letter of July 12, 1954, to Field Examiner returning commerce stipulation.

2-RR Commerce Stipulation signed by Respondent.

2-SS Director of District #5 of United Packinghouse Wkrs. letter of September 17, 1954, to Acting Regional Director, sworn to 9/17/54, enclosing to correct name.

2-TT Motion to Correct Name of Union.

2-UU Notice to Show Cause, dated September 22, 1954.

2-VV Affidavit of Service of Notice to show cause, mailed September 22, 1954, together with United States Post Office return receipt thereof.

2-WW Order granting motion, dated October 4, 1954.

2-XX Affidavit of Service of Order granting



motion, mailed October 4, 1954, together with United States Post Office return receipt thereof.

2-YY Supplemental Report on Challenges, dated October 5, 1954.

2-ZZ Field Examiner of the Board's letter of October 5, 1954, to Respondent setting conference to open and count ballots.

2-AAA Field Examiner of the Board's letter of October 8, 1954, to Respondent postponing conference.

2-BBB Respondent's letter of October 13, 1954, to Field Examiner requesting further postponement.

2-CCC Field Examiner's letter of October 14, 1954, to Respondent setting conference date.

2-DDD Respondent's letter of October 19, 1954, to Acting Regional Director Protesting Count.

2-EEE Revised Tally of Ballots, issued October 19, 1954.

2-FFF Affidavit of Service of Revised Tally of Ballots mailed October 19, 1954, together with United States Post Office return receipt thereof.

2-GGG Certification of Representatives signed October 21, 1954.

2-HHH Respondent's letter of October 25, 1954, to Acting Regional Director enclosing objections to revised tally of ballots.

2-III Objections to conduct affecting results of election.

2-JJJ Acting Regional Director's letter of October 27, 1954, to Respondent explaining circumstances of count.

2-KKK Acting Regional Director's letter of Oc-



tober 29, 1954, to Director of Local #78 of Un. Packinghouse Wkrs. of America acknowledging receipt of objections.

2-LLL Union's memorandum in support of conduct affecting results of election.

2-MMM Respondent's letter of October 29, 1954, to Acting Regional Director acknowledging receipt of JJJ and KKK.

3- 1953-54 Hiring Record.

4- Hiring List dated March 18, 1954.

5- Exhibit Withdrawn.

6- 1954-55 Hiring Record.

7-A Women Packers Seniority List, dated November 25, 1952.

7-B Women Graders—Seniority List dated November 25, 1952.

7-C Men—Seniority List dated November 24, 1952.

8- Field Repr. of Un. Packinghouse Wkrs.' letter of October 22, 1954, to California Date Growers Assoc. requesting a meeting.

9- Field Repr. of Un. Packinghouse Wkrs.' letter of November 2, 1954, to California Date Growers Assoc. requesting a meeting.

10- Respondent's letter of November 5, 1954, to Director of United Packinghouse Wkrs. discussing date for meeting.

11- Field Repr. of Un. Packinghouse Wkrs.' letter of November 23, 1954, to California Date Growers Assoc. requesting a further meeting.

12- Field Repr. of Un. Packinghouse Wkrs.'

letter of December 13, 1954, to California Date Growers Assoc. requesting a further meeting.

13- Field Repr. of Un. Packinghouse Wkrs.' letter of December 23, 1954, to California Date Growers Assoc. requesting a further meeting.

14- Respondent's letter to Field Repr. of Un. Packinghouse Wkrs., received January 14, 1955, agreeing to a meeting.

15- Respondent's letter of January 13, 1955, to Field Examiner advising of the Company's position with respect to the unfair labor practice charge.

16- 1954-55 Hiring List—additional to employees on list 3/18/54.

17- List of 1954-55 Applicants not hired.

18-A List of Graders returned in December 10, 1953, after strike.

18-B List of Graders returned in Fall of 1954, without seniority.

18-C List of Graders not returned.

18-D List of Packers returned—January 18, 1954.

18-E List of Packers returned in Fall of 1954, without seniority.

18-F List of Packers not recalled.

18-G List of Men returned January 18, 1954.

18-H List of Men returned in Fall of 1954, without seniority.

18-I List of Men not recalled.

### Volume II Certified Record

Stenographic transcript of testimony taken before Trial Examiner William E. Spencer on January 9, 10, 11, and 12, 1956.

Copy of Trial Examiner Spencer's Intermediate Report & Recommended Order dated February 20, 1956..... 1-24

Copy of order transferring case to the National Labor Relations Board, dated February 20, 1956..... 1- 4

Respondent's letter of March 23, 1956, to Executive Secretary of the Board requesting Oral argument (Denied, see 2/, page 1 of Decision and Order)..... 1

General Counsel's exceptions to the Intermediate Report received March 26, 1956..... 1- 2

Copy of Decision and Order issued by the National Labor Relations Board on June 21, 1957 ..... 1-13

Petition for Reconsideration of Board's Decision and Order dated June 21, 1957..... 1- 8

Order denying Petition, dated September 3, 1957 ..... 1

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 1st day of November, 1957.

[Seal]      /s/ FRANK M. KLEILER,  
Executive Secretary, National  
Labor Relations Board.

[Endorsed]:    Filed November 6, 1957.

[Endorsed]: No. 15727. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. California Date Growers Association, Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed January 20, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CALIFORNIA DATE GROWERS ASSOCIA-  
TION,

Respondent.

PETITION FOR ENFORCEMENT OF AN OR-  
DER OF THE NATIONAL LABOR RELA-  
TIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, California Date Growers Association, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "California Date Growers Association and United Packinghouse Workers of America, AFL-CIO, Local Union No. 78," Case No. 21-CA-2130.

In support of this petition the Board respectfully shows:



(1) Respondent is a California corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on June 21, 1957, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof post-paid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 34 (7)(a) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make

and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

/s/ STEPHEN LEONARD,  
Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 24th day of September 1957.

[Endorsed]: Filed September 27, 1957.

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[Title of Court of Appeals and Cause]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now the Respondent, California Date Growers Association, a California corporation, organized as a non-profit co-operative association (hereinafter sometimes referred to as Cal Date), and through its attorneys Best, Best & Krieger by John D. Babbage of Riverside, California, answers the petition heretofore filed for enforcement of an order of the National Labor Relations Board, and respectfully admits, denies and alleges as follows:

## I.

Respondent admits that it is engaged in business in the State of California and that this Court has jurisdiction by virtue of Section 10 (e) of the National Labor Relations Act, as amended, of the petition filed herein. Respondent denies that any unfair labor practice occurred as alleged in said petition or as alleged by the National Labor Relations Board, or that it has ever engaged in any unfair labor practice within the meaning of the National Labor Relations Act, as amended.

## II.

Further answering said petition, Respondent denies that the National Labor Relations Board had or has jurisdiction under the National Labor Relations Act, as amended, to order Respondent to cease and desist from refusing to bargain with the United Packinghouse Workers of America AFL-CIO, Local Union No. 78, as the exclusive representative of all of Respondent's employees in the designated unit. Respondent alleges that under the National Labor Relations Act, as amended, and the Constitution, statutes and case law of the United States of America, the Respondent was justified in refusing to bargain with said Union because the Union was not the properly certified bargaining representative for Respondent's employees in the designated unit.

## III.

Respondent alleges that the Regional Director of the National Labor Relations Board for the Twenty-

first Region acted arbitrarily and capriciously in deciding that the ballots of twelve employees who had quit their jobs should be counted when the tally of votes for and against the Union in an election were so close that the counting of said ballots affected the final results of said election.

#### IV.

Respondent alleges that the Regional Director's certification of the Union was invalid because he permitted the challenged ballots to be opened and counted in the absence of Respondent.

#### V.

Respondent further says in answer to said petition that no violation or violations of the National Labor Relations Act, as amended, have ever occurred on the part of said Respondent, Cal Date, and its agents, officers, servants or employees and that the proofs and testimony taken before the trial examiner, as set forth in the record, fail to indicate any such violations, but rather and instead show a distinct compliance with the provisions of said Act and the provisions of the order of the National Labor Relations Board based upon any such alleged violations are entirely without basis in fact.

#### VI.

Respondent denies that it discouraged membership in or activities on behalf of the Union or any other labor organization and denies that it discriminatorily reduced the seniority of employees or entirely deprived them of seniority status. Respondent

denies that in any like or related manner it discriminated in regard to hire and tenure of employment or any conditions of employment.

## VII.

Respondent denies that it has in any manner interfered with, restrained or coerced its employees in the exercise of their rights to self-organization or to form and join labor organizations or to bargain collectively through representatives of their own choosing or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act, as amended, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

## VIII.

Respondent denies that it has or has had any discriminatory seniority policy and further denies that its hiring list of March 18, 1954, was a discriminatory seniority policy.

## IX.

Respondent denies that it should be required to restore to their prestrike seniority all non-replaced strikers who sought reinstatement at the end of the December 1-8, 1953, strike (except twelve employees who refused work on the night shift of January,



1954). Respondent alleges that it was justified in advancing the seniority of non-strikers because such action was consistent with and for the purpose of protecting and continuing Respondent's business during the strike.

#### X.

Respondent denies that it should be required to restore the twelve employees who refused work on the night shift of January, 1954, to reduced seniority at the end of the March 18, 1954, hiring list. Respondent alleges that these twelve employees quit their jobs by refusing work on the night shift of January, 1954. Respondent denies that it should be required to offer reinstatement on the basis of restored seniority to employees whom the National Labor Relations Board alleges were discriminated against, and Respondent denies that it has discriminated against any such employees.

#### XI.

Respondent denies that it should be required, as ordered by the National Labor Relations Board in its order of June 21, 1957, to reimburse any employees whose seasonal hiring was delayed, or whose seasonal layoffs were accelerated, or who otherwise suffered loss of employment because of Respondent's strike seniority policy. Respondent alleges that it did not discriminate against any such employees and Respondent was justified in such strike seniority policy because such action was consistent with and for the purpose of protecting and continuing Respondent's business during the strike.

## XII.

Respondent denies that it should be required, as demanded by the Board in its Order of June 21, 1957, to post at its place of business in Indio, California, copies of the notice attached to the Board's Order of June 21, 1957, and Respondent denies that it should be required to do or not do any of the other acts or things required and set forth in Section 2(g) of the Board's Order of June 21, 1957.

## XIII.

Respondent alleges that it is following a policy and seniority practices that were formulated at the time of the December, 1953 strike for the purely business purpose of providing continued necessary business operations during its highly seasonal packing requirements for the Christmas trade and such necessary seniority policy was not a violation of the National Labor Relations Act, as amended.

## XIV.

Respondent alleges that it has not engaged in and is not engaging in any unfair labor practices under the National Labor Relations Act, as amended, and in particular, Respondent has not committed and is not committing any unfair labor practice with respect to Ola Carden, Anna Lee Tyler, Kathryn White and Pauline Skinner, as charged in the "First Amended Charge Against Employer" filed by the Union with the National Labor Relations Board on January 5, 1955.

## XV.

Respondent further says in answer to said petition that it believes that in all instances its management and supervisors and employees fully complied with the National Labor Relations Act, as amended, and committed no violation thereof.

## XVI.

Respondent further says in answer to said petition that the Findings of Fact of the National Labor Relations Board are not supported by substantial evidence or at all. That the conclusions of law entered by the Board are not in accord with the Statutes and judicial decisions of the United States of America.

Wherefore, California Date Growers Association, Respondent herein, prays this Honorable Court that said order of said National Labor Relations Board be set aside in its entirety as provided in Section 10(e) in said National Labor Relations Act, as amended, upon the grounds and for the reasons hereinabove set forth and that the petition of the National Labor Relations Board be dismissed.

BEST, BEST & KRIEGER,

By /s/ JOHN D. BABBAGE,

Attorneys for Respondent.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed October 14, 1957.

[Title of Court of Appeals and Cause]

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, petitioner herein, intends to rely upon the following points in this case:

I. The Board properly found that respondent violated Section 8 (a)(5) and (1) of the Act by refusing to bargain collectively with the certified representative of its employees.

A. The Board's rulings in the representation proceeding with respect to the eligibility of voters and the procedure for counting ballots were proper.

II. Substantial evidence supports the Board's finding that respondent, in violation of Section 8 (a) (3) and (1) of the Act, reduced or abolished the seniority of unreplaced economic strikers after the strike as a penalty for striking.

Respectfully submitted,

/s/ STEPHEN LEONARD,  
Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 1st day of November, 1957.

[Endorsed]: Filed November 6, 1957.